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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation

LOK SABHA

The following Bills were introduced in Lok Sabha on the 15th May, 1978:—

BILL No. 88 OF 1978

A Bill further to amend the Constitution of India.

Be it enacted by Parliament in the Twenty-ninth Year of the Republic of India as follows:—

1. (1) This Act may be called the Constitution (Forty-fifth Amendment) Act, 1978.

Short
title and
commen-
cement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act.

2. In article 19 of the Constitution,—

Amend-
ment of
article 19

(a) in clause (1),—

(i) in sub-clause (e), the word “and” shall be inserted at the end;

(ii) sub-clause (f) shall be omitted;

(b) in clause (5), for the words, brackets and letters “sub-clauses (d), (e) and (f)”, the words, brackets and letters “sub-clauses (d) and (e)” shall be substituted.

3. In article 22 of the Constitution,—

Amend-
ment of
article 22

(a) for clause (4), the following clause shall be substituted, namely:—

“(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than two

months unless an Advisory Board constituted in accordance with the recommendations of the Chief Justice of the appropriate High Court has reported before the expiration of the said period of two months that there is in its opinion sufficient cause for such detention

Provided that an Advisory Board shall consist of a Chairman and not less than two other members, and the Chairman shall be a serving Judge of the appropriate High Court and the other members shall be serving or retired Judges of any High Court:

Provided further that nothing in this clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (a) of clause (7).

Explanation.—In this clause, “appropriate High Court” means,—

(i) in the case of the detention of a person in pursuance of an order of detention made by the Government of India or an officer or authority subordinate to that Government, the High Court for the Union territory of Delhi;

(ii) in the case of the detention of a person in pursuance of an order of detention made by the Government of any State (other than a Union territory), the High Court for that State; and

(iii) in the case of the detention of a person in pursuance of an order of detention made by the administrator of a Union territory or an officer or authority subordinate to such administrator, such High Court as may be specified by or under any law made by Parliament in this behalf;

(b) in clause (7),—

(i) sub-clause (a) shall be omitted;

(ii) sub-clause (b) shall be re-lettered as sub-clause (a); and

(iii) sub-clause (c) shall be re-lettered as sub-clause (b) and in the sub-clause as so re-lettered, for the words, brackets, letter and figure “sub-clause (a) of clause (4)”, the word, brackets and figure “clause (4)” shall be substituted.

Amend-
ment of
article 30.

4. In article 30 of the Constitution, after clause (1), the following clause shall be inserted, namely:—

“(1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.”

Omission
of sub-
heading
after
article 28.

5. The sub-heading “Right to Property” occurring after article 30 of the Constitution shall be omitted.

- 6. Article 31 of the Constitution shall be omitted.** Omission of article 31.
- 7. In article 31A of the Constitution, in clause (1), for the words and figures "article 14, article 19 or article 31", the words and figures "article 14 or article 19" shall be substituted.** Amendment of article 31A.
- 8. In article 31C of the Constitution,—** Amendment of article 31C.
- (a) for the words and figures "all or any of the principles laid down in Part IV", the words, brackets, letters and figures "the principles laid down in clause (b) or clause (c) of article 39" shall be substituted;
- (b) for the words and figures "article 14, article 19 or article 31;", the words and figures "article 14 or article 19:" shall be substituted;
- (c) the words "and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy:" shall be omitted.
- 9. Article 38 of the Constitution shall be renumbered as clause (1) thereof and after the clause as so renumbered, the following clause shall be inserted, namely:—** Amendment of article 38.
- “(2) The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.”
- 10. For article 71 of the Constitution, the following article shall be substituted, namely:—** Substitution of new article for article 71.
- “71. (1) All doubts and disputes arising out of or in connection with the election of a President or Vice-President shall be inquired into and decided by the Supreme Court whose decision shall be final. Matters relating to, or connected with, the election of a President or Vice-President.
- (2) If the election of a person as President or Vice-President is declared void by the Supreme Court, acts done by him in the exercise and performance of the powers and duties of the office of President or Vice-President, as the case may be, on or before the date of the decision of the Supreme Court shall not be invalidated by reason of that declaration.
- (3) Subject to the provisions of this Constitution, Parliament may by law regulate any matter relating to or connected with the election of a President or Vice-President.
- (4) The election of a person as President or Vice-President shall not be called in question on the ground of the existence of any vacancy for whatever reason among the members of the electoral college electing him.”

Amend-
ment of
article 74.

11. In article 74 of the Constitution, in clause (1), the following proviso shall be inserted at the end, namely:—

“Provided that the President may require the Council of Ministers to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration.”.

Amend-
ment of
article 77.

12. In article 77 of the Constitution, clause (4) shall be omitted.

Amend-
ment of
article 83.

13. (1) In article 83 of the Constitution, in clause (2), for the words “six years” in both the places where they occur, the words “five years” shall be substituted.

(2) The amendments made by sub-section (1) to clause (2) of article 83 shall apply also to the House of the People in existence on the date of coming into force of this section without prejudice to the power of Parliament with respect to the extension of the duration of that House under the proviso to that clause.

Substitu-
tion of
new
article
for
article
103.

14. For article 103 of the Constitution, the following article shall be substituted, namely:—

Decision
on
questions
as to
disqualifi-
cations of
members.

“103. (1) If any question arises as to whether a member of either House of Parliament has become subject to any of the disqualifications mentioned in clause (1) of article 102, the question shall be referred for the decision of the President and his decision shall be final.

(2) Before giving any decision on any such question, the President shall obtain the opinion of the Election Commission and shall act according to such opinion.”.

Amend-
ment of
article
105.

15. In article 105 of the Constitution, in clause (3), for the words “shall be those of the House of Commons of the Parliament of the United Kingdom, and of its members and committees, at the commencement of this Constitution”, the words, figures and brackets “shall be those of that House and of its members and committees immediately before the coming into force of section 15 of the Constitution (Forty-fifth Amendment) Act, 1978” shall be substituted.

Amend-
ment of
article
123.

16. In article 123 of the Constitution, clause (4) shall be omitted.

Amend-
ment of
article
132

17. In article 132 of the Constitution,—

(a) in clause (1), for the words “if the High Court certifies”, the words, figures and letter “if the High Court certifies under article 134A” shall be substituted;

(b) clause (2) shall be omitted;

(c) in clause (3), the words “or such leave is granted,” and the words “and, with the leave of the Supreme Court, on any other ground” shall be omitted.

18. In article 133 of the Constitution, in clause (1), for the words "if the High Court certifies—", the words, figures and letter "if the High Court certifies under article 134A—" shall be substituted. Amend-
ment of
article
133.
19. In article 134 of the Constitution, in sub-clause (c) of clause (1), for the word "certifies", the words, figures and letter "certifies under article 134A" shall be substituted. Amend-
ment of
article
134.
20. After article 134 of the Constitution, the following article shall be inserted, namely:— Insertion
of new
article
134A.
- "134A. Every High Court, passing or making a judgment, decree, final order, or sentence, referred to in clause (1) of article 132 or clause (1) of article 133, or clause (1) of article 134,—
- (a) may, if it deems fit so to do on its own motion; and
- (b) shall, if an oral application is made, by or on behalf of the party aggrieved, immediately after the passing or making of such judgment, decree, final order or sentence,
- determine, as soon as may be after such passing or making, the question whether a certificate of the nature referred to in clause (1) of article 132, or clause (1) of article 133 or, as the case may be, sub-clause (c) of clause (1) of article 134, may be given in respect of that case."
- Certificate
for
appeal to
the
Supreme
Court.
21. In article 139A of the Constitution, for clause (1), the following clause shall be substituted, namely:— Amend-
ment of
article
139A.
- "(1) Where cases involving the same or substantially the same questions of law are pending before the Supreme Court and one or more High Courts or before two or more High Courts and the Supreme Court is satisfied on its own motion or on an application made by the Attorney-General of India or by a party to any such case that such questions are substantial questions of general importance, the Supreme Court may withdraw the case or cases pending before the High Court or the High Courts and dispose of all the cases itself."
22. In article 150 of the Constitution, for the words "after consultation with", the words "with the concurrence of" shall be substituted. Amend-
ment of
article
150.
23. In article 166 of the Constitution, clause (4) shall be omitted. Amend-
ment of
article
166.
24. (1) In article 172 of the Constitution, in clause (1), for the words "six years" in both the places where they occur, the words "five years" shall be substituted. Amend-
ment of
article
172.
- (2) The amendments made by sub-section (1) to clause (1) of article 172—
- (a) shall not apply to any existing State Legislative Assembly the period of existence whereof as computed from the date appointed for its first meeting to the date of coming into force of this section

(both dates inclusive) is more than four years and eight months but every such Assembly shall, unless sooner dissolved, stand dissolved on the expiry of—

(i) a period of four months from the date of coming into force of this section; or

(ii) a period of six years from the date appointed for its first meeting,

whichever period expires earlier;

(b) shall apply to every other existing State Legislative Assembly without prejudice to the power of Parliament with respect to the extension of duration of such Assembly under the proviso to the said clause (1).

Explanation I.—In its application to the Legislative Assembly of the State of Sikkim referred to in clause (b) of article 371F of the Constitution, this sub-section shall have effect as if—

(i) the date appointed for the first meeting of that Assembly were the 26th day of April, 1975; and

(ii) the references in clause (a) of this sub-section to “four years and eight months” and “six years” were references to “three years and eight months” and “five years” respectively.

Explanation II.—In this sub-section, “existing State Legislative Assembly” means the Legislative Assembly of a State in existence on the date of coming into force of this section.

25. For article 192 of the Constitution, the following article shall be substituted, namely:—

Substitution of new article for article 192.

“192. (1) If any question arises as to whether a member of a House of the Legislature of a State has become subject to any of the disqualifications mentioned in clause (1) of article 191, the question shall be referred for the decision of the Governor and his decision shall be final.

Decision on questions as to disqualifications of members.

(2) Before giving any decision on any such question, the Governor shall obtain the opinion of the Election Commission and shall act according to such opinion.”

Amendment of article 194.

26. In article 194 of the Constitution, in clause (3), for the words “shall be those of the House of Commons of the Parliament of the United Kingdom, and of its members and committees at the commencement of this Constitution”, the words, figures and brackets “shall be those of that House and of its members and committees immediately before the coming into force of section 26 of the Constitution (Forty-fifth Amendment) Act, 1978” shall be substituted.

Amendment of article 213.

27. In article 213 of the Constitution, clause (4) shall be omitted.

28. In article 217 of the Constitution, in clause (2),—

(a) in sub-clause (b) the word 'or' occurring at the end shall be omitted,

(b) sub-clause (c) shall be omitted

(c) in the Explanation, clause (a) shall be re-lettered as clause (aa) and before clause (aa) as so re-lettered, the following clause shall be inserted namely—

“(a) in computing the period during which a person has held judicial office in the territory of India, there shall be included any period after he has held any judicial office, during which the person has been an advocate of a High Court or has held the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law.”.

Amend-
ment of
article
217.

29. In article 225 of the Constitution the following proviso shall be inserted at the end, namely

“Provided that any restriction to which the exercise of original jurisdiction by any of the High Courts with respect to any matter concerning the revenue or concerning any act ordered or done in the collection thereof was subject immediately before the commencement of this Constitution shall no longer apply to the exercise of such jurisdiction”

Amend-
ment of
article
225

30. In article 226 of the Constitution—

(a) in clause (1) for the portion beginning with the words “writs in the nature of *habeas corpus mandamus*, prohibition, *quo warranto* and *certiorari*, or any of them” and ending with the words “such illegality has resulted in substantial failure of justice.”, the following shall be substituted, namely,—

“writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari* or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose”.

(b) for clauses (2) (4) (5) and (6), the following clause shall be substituted, namely—

“(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1) without

(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order, and

(b) giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of

Amend-
ment of
article
226.

such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.”;

(c) clause (7) shall be renumbered as clause (4).

Amend-
ment of
article
227.

31. In article 227 of the Constitution,—

(a) for clause (1), the following clause shall be substituted, namely:—

“(1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.”;

(b) clause (5) shall be omitted.

Amend-
ment of
article
239B.

32. In article 239B of the Constitution, clause (4) shall be omitted.

Omis-
sion of
article
257A.

33. Article 257A of the Constitution shall be omitted.

Insertion
of new
Chapter
IV in
Part XII.

34. In Part XII of the Constitution, after Chapter III, the following Chapter shall be inserted, namely:—

“CHAPTER IV.—RIGHT TO PROPERTY

Persons
not to be
deprived
of pro-
perty save
by au-
thority of
law.

300A. No person shall be deprived of his property save by authority of law.”.

Omission
of Part
XIVA.

35. Part XIVA of the Constitution shall be omitted.

Amend-
ment of
article
329.

36. In article 329 of the Constitution, in the opening portion, the words, figures and letter “but subject to the provisions of article 329A” shall be omitted.

Omission
of article
329A.

37. Article 329A of the Constitution shall be omitted.

Amend-
ment of
article
352.

38. In article 352 of the Constitution,

(a) in clause (1),—

(i) for the words “internal disturbance”, the words “armed rebellion” shall be substituted;

(ii) the following Explanation shall be inserted at the end, namely:—

“Explanation.—A Proclamation of Emergency declaring that the security of India or any part of the territory thereof is threatened by war or by external aggression or by armed rebellion may be made before the actual occurrence of war or of any such aggression or rebellion, if the President is satisfied that there is imminent danger thereof.”;

(b) for clauses (2), (2A) and (3), the following clauses shall be substituted, namely:—

“(2) A Proclamation issued under clause (1) may be varied or revoked by a subsequent Proclamation.

(3) The President shall not issue a Proclamation under clause (1) or a Proclamation varying such Proclamation unless the decision of the Union Cabinet (that is to say, the Council consisting of the Prime Minister and other Ministers of Cabinet rank appointed under article 75) that such a Proclamation may be issued has been communicated to him in writing.

(4) Every Proclamation issued under this article shall be laid before each House of Parliament and shall, except where it is a Proclamation revoking a previous Proclamation, cease to operate at the expiration of one month unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament:

Provided that if any such Proclamation (not being a Proclamation revoking a previous Proclamation) is issued at a time when the House of the People has been dissolved, or the dissolution of the House of the People takes place during the period of one month referred to in this clause, and if a resolution approving the Proclamation has been passed by the Council of States, but no resolution with respect to such Proclamation has been passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution, unless before the expiration of the said period of thirty days a resolution approving the Proclamation has been also passed by the House of the People.

(5) A Proclamation so approved shall, unless revoked, cease to operate on the expiration of a period of six months from the date of the passing of the second of the resolutions approving the Proclamation under clause (4):

Provided that if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of Parliament the Proclamation shall, unless revoked, continue in force for a further period of six months from the date on which it would otherwise have ceased to operate under this clause:

Provided further that if the dissolution of the House of the People takes place during any such period of six months and a

resolution approving the continuance in force of such Proclamation has been passed by the Council of States but no resolution with respect to the continuance in force of such Proclamation has been passed by the House of the People during the said period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days, a resolution approving the continuance in force of the Proclamation has been also passed by the House of the People.

(6) For the purposes of clauses (4) and (5), a resolution may be passed by either House of Parliament only by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting.

(7) Notwithstanding anything contained in the foregoing clauses, the President shall revoke a Proclamation issued under clause (1) or a Proclamation varying such Proclamation if the House of the People passes a resolution disapproving, or, as the case may be, disapproving the continuance in force of, such Proclamation.

(8) Where a notice in writing signed by not less than one-tenth of the total number of members of the House of the People has been given, of their intention to move a resolution for disapproving, or, as the case may be, for disapproving the continuance in force of, a Proclamation issued under clause (1) or a Proclamation varying such Proclamation,—

(a) to the Speaker, if the House is in session; or

(b) to the President, if the House is not in session,

a special sitting of the House shall be held within fourteen days from the date on which such notice is received by the Speaker, or, as the case may be, by the President, for the purpose of considering such resolution.”;

(c) clause (4) shall be renumbered as clause (9) and in the clause as so renumbered, for the words “internal disturbance” in both the places where they occur, the words “armed rebellion” shall be substituted;

(d) clause (5) shall be omitted.

39. In article 356 of the Constitution,—

(a) in clause (4),—

(i) for the words, brackets and figure “one year from the date of the passing of the second of the resolutions approving the Proclamation under clause (3)”, the words “six months from the date of issue of the Proclamation” shall be substituted;

(ii) in the first proviso, for the words “one year”, the words “six months” shall be substituted;

(iii) in the second proviso, for the words “one year”, the words “six months” shall be substituted;

(b) for clause (5) the following clause shall be substituted, namely:—

“(5) Notwithstanding anything contained in clause (4), a resolution with respect to the continuance in force of a Proclamation approved under clause (3) for any period beyond the expiration of one year from the date of issue of such Proclamation shall not be passed by either House of Parliament unless —

(a) a Proclamation of Emergency is in operation, in the whole of India or, as the case may be, in the whole or any part of the State, at the time of the passing of such resolution, and

(b) the Election Commission certifies that the continuance in force of the Proclamation approved under clause (3) during the period specified in such resolution is necessary on account of difficulties in holding general elections to the Legislative Assembly of the State concerned.”

40 Article 358 of the Constitution shall be renumbered as clause (1) of that article and—

Amend-
ment of
article
358.

(a) in clause (1) as so renumbered,—

(i) in the opening portion, for the words “While a Proclamation of Emergency is in operation”, the words “While a Proclamation of Emergency declaring that the security of India or any part of the territory thereof is threatened by war or by external aggression is in operation” shall be substituted;

(ii) in the proviso, for the words “where a Proclamation of Emergency” the words “where such Proclamation of Emergency” shall be substituted;

(b) after clause (1) as so renumbered, the following clause shall be inserted, namely:—

“(2) Nothing in clause (1) shall apply—

(a) to any law which does not contain a recital to the effect that such law is in relation to the Proclamation of Emergency in operation when it is made; or

(b) to any executive action taken otherwise than under a law containing such a recital.”

41. In article 359 of the Constitution,—

Amend-
ment of
article
359.

(a) in clauses (1) and (1A), for the words and figures “the rights conferred by Part III”, the words, figures and brackets “the rights conferred by Part III (except article 21)” shall be substituted;

(b) after clause (1A), the following clause shall be inserted, namely:—

“(1B) Nothing in clause (1A) shall apply—

(a) to any law which does not contain a recital to the effect that such law is in relation to the Proclamation of Emergency in operation when it is made; or

(b) to any executive action taken otherwise than under a law containing such a recital.”.

Amend-
ment of
article
360.

42. In article 360 of the Constitution,—

(a) for clause (2), the following clause shall be substituted, namely:—

“(2) A Proclamation issued under clause (1)—

(a) may be revoked or varied by a subsequent Proclamation;

(b) shall be laid before each House of Parliament;

(c) shall cease to operate at the expiration of two months, unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament:

Provided that if any such Proclamation is issued at a time when the House of the People has been dissolved or the dissolution of the House of the People takes place during the period of two months referred to in sub-clause (c), and if a resolution approving the Proclamation has been passed by the Council of States, but no resolution with respect to such Proclamation has been passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution, unless before the expiration of the said period of thirty days a resolution approving the Proclamation has been also passed by the House of the People.”;

(b) clause (5) shall be omitted.

Insertion
of new
article
361A.

Protection
of publi-
cation of
proceed-
ings of
Parlia-
ment and
State Le-
gislatures.

43. After article 361 of the Constitution, the following article shall be inserted, namely:—

‘361A. (1) No person shall be liable to any proceedings, civil or criminal, in any court in respect of the publication in a newspaper of a substantially true report of any proceedings of either House of Parliament or the Legislative Assembly, or, as the case may be, either House of the Legislature, of a State, unless the publication is proved to have been made with malice:

Provided that nothing in this clause shall apply to the publication of any report of the proceedings of a secret sitting of either House of Parliament or the Legislative Assembly, or, as the case may be, either House of the Legislature, of a State.

(2) Clause (1) shall apply in relation to reports or matters broadcast by means of wireless telegraphy as part of any programme or service provided by means of a broadcasting station as it applies in relation to reports or matters published in a newspaper.

Explanation.—In this article, “newspaper” includes a news agency report containing material for publication in a newspaper.”

44. Article 366 of the Constitution shall be renumbered as clause (2) of that article, and before clause (2) as so renumbered, the following clause shall be inserted, namely:—

Amend-
ment of
article
366.

“(1) In the Preamble to this Constitution,—

(1) the expression “REPUBLIC” as qualified by the expression “SECULAR”, means a republic in which there is equal respect for all religions; and

(2) the expression “REPUBLIC”, as qualified by the expression “SOCIALIST”, means a republic in which there is freedom from all forms of exploitation, social, political and economic.”

45. In article 368 of the Constitution,—

Amend-
ment of
article
368.

(a) in clause (2), after the proviso, the following proviso shall be inserted, namely:—

“Provided further that if such amendment—

(a) seeks to make any change which, if made, would have the effect of—

(i) impairing the secular or democratic character of this Constitution; or

(ii) abridging or taking away the rights of citizens under Part III, or

(iii) prejudicing or impeding free and fair elections to the House of the People or the Legislative Assemblies of States on the basis of adult suffrage; or

(iv) compromising the independence of the judiciary; or

(b) seeks to amend this proviso,

the amendment shall also require to be approved by the people of India at a referendum under clause (4).”;

(b) for clauses (4) and (5), the following clauses shall be substituted, namely:—

“(4) The referendum for the purpose of seeking the approval of the people of India for any amendment of the nature referred to in the second proviso to clause (2) shall be through a poll, and—

(i) all persons who are for the time being eligible to be voters under article 326 at elections to the House of the People shall be entitled to vote at such poll; and

(ii) any such amendment shall be deemed to have been approved by the people of India if such amendment is approved by a majority of the voters voting at such poll and the voters voting at such poll constitute not less than fifty-one per cent. of the voters entitled to vote at such poll.

(5) The superintendence, direction and control of the preparation of the rolls of voters for, and the conduct of, every referendum under this article shall vest in the Election Commission and the result of such referendum as declared by the Election Commission shall not be called in question in any court.

(6) Subject to the provisions of clauses (4) and (5), Parliament may from time to time by law make provision with respect to all matters relating to, or in connection with, referenda under this article, including the preparation of the rolls of voters.”.

Amendment of article 371F.

46. In article 371F of the Constitution, in clause (c), for the words “six years”, the words “five years” shall be substituted, and for the words “five years” in both the places where they occur, the words “four years” shall be substituted.

Amendment of the Seventh Schedule.

47. In the Seventh Schedule to the Constitution,—

- (a) in List I—Union List, entry 2A shall be omitted
- (b) in List II—State List,—

(i) in entry 1, for the words “the use of any naval, military or air force or any other armed force of the Union or of any other force subject to the control of the Union or of any contingent or unit thereof”, the words “the use of naval, military or air forces or any other armed forces of the Union” shall be substituted;

(ii) for entry 2, the following entry shall be substituted, namely:—

“2. Police, including railway and village police”;

(iii) after entry 10, the following entry shall be inserted, namely:—

“11. Education, including universities, subject to the provisions of entries 63, 64, 65 and 66 of List I and entry 25 of List III.”;

(iv) after entry 18, the following entry shall be inserted, namely:—

“19. Forests.”;

(v) in entry 41, for the words “State public services”, the words, figures and letter “State public services subject to the provisions of entry 11B of List III” shall be substituted;

(c) in List III—Concurrent List,—

(i) after entry 11A, the following entry shall be inserted, namely:—

“11B. Adjudication or trial by tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of a State or of a local or other authority subject to the control of a State Government.”;

(ii) entry 17A shall be omitted;

(iii) for entry 25, the following entry shall be substituted, namely:—

“25 Vocational and technical training of labour.”.

48. In the Ninth Schedule to the Constitution, entries 87, 92 and 130 shall be omitted.

Amend-
ment of
the
Ninth
Schedule.

49. In the Constitution (Forty-second Amendment) Act, 1976, sections 18, 19, 21, 22, 31, 32, 34, 35, 58 and 59 shall be omitted.

Amend-
ment of
the Consti-
tution
(Forty-
second
Amend-
ment)
Act, 1976

STATEMENT OF OBJECTS AND REASONS

Recent experience has shown that the fundamental rights, including those of life and liberty granted to citizens by the Constitution are capable of being taken away by a transient majority. It is, therefore, necessary to provide adequate safeguards against the recurrence of such a contingency in the future and to ensure to the people themselves an effective voice in determining the form of government under which they are to live. This is one of the primary objects of this Bill.

2. It is, therefore, proposed to provide that certain changes in the Constitution which would have the effect of impairing its secular or democratic character, abridging or taking away fundamental rights prejudicing or impeding free and fair elections on the basis of adult suffrage and compromising the independence of judiciary, can be made only if they are approved by the people of India by a majority of votes at a referendum in which at least fifty-one per cent. of the electorate participate. Article 368 is being amended to ensure this.

3. In view of the special position sought to be given to fundamental rights, the right to property, which has been the occasion for more than one amendment of the Constitution, would cease to be a fundamental right and become only a legal right. Necessary amendments for this purpose are being made to article 19 and article 31 is being deleted. It would, however, be ensured that the removal of property from the list of fundamental rights would not affect the right of minorities to establish and administer educational institutions of their choice.

4. Similarly, the right of persons holding land for personal cultivation and within the ceiling limit to receive compensation at the market value would not be affected.

5. Property, while ceasing to be a fundamental right, would, however, be given express recognition as a legal right, provision being made that no person shall be deprived of his property save in accordance with law.

6. A Proclamation of Emergency under article 352 has virtually the effect of amending the Constitution by converting it for the duration into that of a Unitary State and enabling the rights of the citizen to move the courts for the enforcement of fundamental rights—including the right to life and liberty—to be suspended. Adequate safeguards are, therefore, necessary to ensure that this power is properly exercised and is not abused. It is, therefore, proposed that a Proclamation of Emergency can be issued only when the security of India or any part of its territory is threatened by war or external aggression or by armed rebellion. Internal disturbance not amounting to armed rebellion would not be a ground for the issue of a Proclamation.

7. Further, in order to ensure that a Proclamation is issued only after due consideration, it is sought to be provided that an Emergency can be proclaimed only on the basis of written advice tendered to the President by the Cabinet. In addition, as a Proclamation of Emergency virtually has the effect of amending the Constitution, it is being provided that the Proclamation would have to be approved by the two Houses of Parliament by the same majority which is necessary to amend the Constitution and such approval would have to be given within a period of one month. Any such Proclamation would be in force only for a period of six months.

and can be continued only by further resolutions passed by the same majority. The Proclamation would also cease to be in operation if a resolution disapproving the continuance of the Proclamation is passed by Lok Sabha. Ten per cent. or more of the Members of Lok Sabha can requisition a special meeting for considering a resolution for disapproving the Proclamation.

8. As a further check against the misuse of the Emergency provisions and to put the right to life and liberty on a secure footing, it would be provided that the power to suspend the right to move the court for the enforcement of a fundamental right cannot be exercised in respect of the fundamental right to life and liberty. The right to liberty is further strengthened by the provision that a law for preventive detention cannot authorise, in any case, detention for a longer period than two months, unless an Advisory Board has reported that there is sufficient cause for such detention. An additional safeguard would be provided by the requirement that the Chairman of an Advisory Board shall be a serving Judge of the appropriate High Court and that the Board shall be constituted in accordance with the recommendations of the Chief Justice of that High Court.

9. A special provision is being made guaranteeing the right of the media to report freely and without censorship the proceedings in Parliament and the State Legislatures. The provision with regard to the breakdown of the constitutional machinery in the States is being amended so as to provide that a Proclamation issued under article 356 would be in force only for a period of six months in the first instance and that it cannot exceed one year ordinarily. However, if a Proclamation of Emergency is in operation and the Election Commission certifies that the extension of the President's rule beyond a period of one year is necessary on account of difficulties in holding elections to the Legislative Assembly of the State concerned, the period of operation of the Proclamation can be extended beyond one year. This is subject to the existing limit of three years. These changes would ensure that democratic rule is restored to a State after the minimum period which will be necessary for holding elections.

10. With a view to avoiding delays, it is proposed to amend articles 132, 133 and 134 and insert a new article 134A to provide that a High Court should consider the question of granting a certificate for appeal to Supreme Court immediately after the delivery of the judgment, decree, final order or sentence concerned on the basis of an oral application by a party or, if the High Court deems fit so to do, on its own motion. Cases of special leave to appeal by Supreme Court will be left to be regulated exclusively by article 136.

11. The other amendments proposed in the Bill are mainly for removing or correcting the distortions which came into the Constitution by reason of amendments enacted during the period of the Internal Emergency.

12. The Bill seeks to achieve the above objects. The notes on clauses explain in detail the various provisions of the Bill.

NEW DELHI;
The 9th May, 1978.

SHANTI BHUSHAN

Notes on clauses

1. *Clauses 2, 4, 5, 6, 7, sub-clause (b) of clause 8 and clause 34.*—The object of the amendments proposed in these provisions is to take away the right to property from the category of fundamental rights and make the same a right which can be regulated by ordinary law. Clause 2(a)(ii) seeks to omit sub-clause (f) of clause (1) of article 19 which guarantees to citizens the right to acquire, hold and dispose of property. Clause 6 seeks to omit article 31 relating to the right to property. The safeguard contained in article 31 relating to acquisition of property of an educational institution established and administered by a minority is sought to be incorporated in article 30 by the amendment to that article proposed in clause 4. Clause 34 seeks to insert a new article 300A in Part XII of the Constitution to provide that no person shall be deprived of his property save by authority of law. The amendments proposed in clause 2(a)(i), clause 2(b), clause 5, clause 7 and clause 8(b) are of a consequential nature.

2. *Clause 3.*—This clause seeks to amend the provisions as to preventive detention contained in article 22—

(a) for restricting the maximum period for which a person may be detained without obtaining the opinion of the Advisory Board from three months to two months;

(b) for providing that an Advisory Board shall consist of a Chairman and not less than two other members, that the composition of an Advisory Board shall be in accordance with the recommendations of the Chief Justice of the appropriate High Court (that is to say, the High Court for Delhi in the case of detention orders made by the Central Government or officers subordinate to the Central Government; the High Court for a State in the case of detention orders made by a State Government or officers subordinate to a State Government; and such High Court as may be specified by Parliament by law in the case of orders of detention made by the Administrator of a Union territory or officers subordinate to him), and that the Chairman of an Advisory Board shall be a sitting Judge of the appropriate High Court and the other members of an Advisory Board shall be sitting or retired Judges of any High Court; and

(c) for abolishing the system of preventive detention without reference to an Advisory Board provided in sub-clause (a) of clause (7) of article 22.

3. *Clauses 4, 5, 6 and 7.*—See paragraph 1 above.

4. *Clause 8.*—The amendment proposed in sub-clause (a) of this clause, is for confining the protection afforded by article 31C only to laws giving effect to the policy of the State towards securing the directive principles specified in clauses (b) and (c) of article 39. This would have the effect of restoring the article to the form in which it stood before the amendment made to the article by the Constitution (Forty-second Amendment)

Act, 1976 came into force. The amendment proposed in sub-clause (b) is consequential to the omission of article 31 (see paragraph 1 above). The amendment proposed in sub-clause (c) is for omitting the portion relating to declaration contained in article 31C which was struck down by the Supreme Court in *Kesavananda Bharati vs. the State of Kerala* (1973 Supp. SCR 1).

5. *Clause 9.*—This clause seeks to insert a new directive principle in article 38 to the effect that the State shall strive to minimise inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

6. *Clause 10.*—Article 71 as originally enacted gave jurisdiction to the Supreme Court to inquire into all doubts and disputes arising out of or in connection with the election of a President or Vice-President. The Constitution (Thirty-ninth Amendment) Act, 1975, substituted the article by a new article leaving it to Parliament to determine the authority or body which may inquire into such doubts and disputes. This clause seeks to restore the position as it obtained before the Constitution (Thirty-ninth Amendment) Act, 1975, came into force.

7. *Clause 11.*—This clause seeks to amend clause (1) of article 74 of the Constitution to provide that the President may require the Council of Ministers to reconsider any advice tendered by them and that the President shall act in accordance with the advice tendered after such reconsideration.

8. *Clauses 12 and 23.*—The Constitution (Forty-second Amendment) Act included a new clause (4) in article 77 and a new clause (4) in article 166 to take away the power of courts to compel production of rules relating to transaction of the business of the Government of India and the Government of a State. Clause 12 seeks to omit the said clause (4) of article 77 while clause 23 seeks to omit the said clause (4) of article 166.

9. *Clauses 13, 24 and 46.*—These clauses seek to amend articles 83, 172 and 371F respectively of the Constitution to restore the term of the Lok Sabha and the State Legislative Assemblies to five years with necessary saving provisions.

10. *Clauses 14 and 25.*—These clauses seek to substitute articles 103 and 192 (relating respectively to decisions on questions as to disqualification of Members of Parliament and State Legislatures) to provide that decisions on questions as to disqualification of Members shall be in accordance with the opinion of the Election Commission and thereby restore the position as it obtained prior to the Constitution (Forty-second Amendment) Act.

11. *Clauses 15 and 26.*—These clauses seek to amend article 105 and article 194 (relating respectively to the privileges of Houses of Parliament and of State Legislatures). The amendments are for the purpose of omitting the references to the House of Commons in these articles.

12. *Clauses 16, 27 and 32.*—The Constitution (Thirty-eighth Amendment) Act, 1975, inserted a new clause (4) in article 123, article 213 and article 239B (relating respectively to the powers of the

President, Governor of a State and Administrator of a Union territory to promulgate Ordinances) to specify expressly that the satisfaction of the President, Governor or Administrator regarding the existence of the circumstances necessary for taking immediate action by promulgation of an Ordinance shall be final and conclusive. The said new clauses are proposed to be omitted.

13. *Clauses 17, 18, 19 and 20.*—At present appeal lies under article 132 of the Constitution to the Supreme Court in certain cases upon the High Court granting a certificate under that article. Where the High Court has refused to give such a certificate, the Supreme Court may grant special leave. Under article 133, appeal lies to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court if the High Court grants a certificate under that article. Under article 134(1)(c), an appeal lies to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court if the High Court grants a certificate that the case is a fit one for appeal to the Supreme Court. It is proposed to amend articles 132, 133 and 134 and insert a new article 134A to provide that the High Court should consider the question of granting of certificate immediately on the delivery of the judgment, decree, final order, or sentence concerned on the basis of an oral application by a party or, if the High Court deems it fit so to do, on its own motion. It is also proposed to omit the provisions in article 132 relating to grant of special leave by Supreme Court in cases where the High Court refuses to give a certificate. Cases of special leave to appeal by Supreme Court will thus be left to be regulated exclusively by article 136 of the Constitution.

14. *Clause 21.*—This relates to article 139A which was inserted by the Constitution (Forty-second Amendment) Act. Under clause (1) of this article, if the Supreme Court is satisfied, on an application made by the Attorney-General of India, that cases involving the same or substantially the same questions of law are pending before it and one or more High Courts or before two or more High Courts and that such questions are substantial questions of general importance, the Supreme Court may withdraw the case or cases pending before the High Court or the High Courts and dispose of all the cases itself. The Supreme Court can take action under this provision only if an application is made by the Attorney-General. Clause (1) of article 139A is sought to be amended so as to enable a party to any such case also to make a similar application to the Supreme Court.

15. *Clause 22.*—Under article 150, as amended by the Constitution (Forty-second Amendment) Act, the form in which accounts of the Union and the States shall be kept shall be such as may be prescribed by the President after consultation with the Comptroller and Auditor-General of India. This clause seeks to amend article 150 to provide that the form should be prescribed with the concurrence of the Comptroller and Auditor-General and not merely after consultation.

16. *Clause 23.*—See paragraph 8 above.

17. *Clause 24.*—See paragraph 9 above.

18. *Clause 25.*—See paragraph 10 above.

19. *Clause 26.*—See paragraph 11 above.

20. *Clause 27.*—See paragraph 12 above.

21. *Clause 28.*—Sub-clause (b) of this clause seeks to omit sub-clause (c) of clause (2) of article 217 of the Constitution which was inserted by the Constitution (Forty-second Amendment) Act for making persons who, in the opinion of the President, are distinguished jurists, eligible for appointment as Judges of High Courts. The amendment proposed in sub-clause (a) of this clause is of a consequential and drafting nature.

Sub-clause (c) of this clause seeks to amend the *Explanation* to clause (2) of article 217 for the purpose of removing an anomaly. Under clause (a) of the *Explanation* as it exists now, any period during which a person has, after becoming an advocate, held judicial office or the office of the member of a tribunal or any post, under the Union or a State, requiring special knowledge of law will be included in computing the period during which he has been an advocate for the purposes of determining his eligibility for appointment as a Judge of a High Court. There is no corresponding provision in the *Explanation* in relation to a person who started as a Judge without being an advocate and who subsequently became an advocate or a member of a tribunal or the holder of any post under the Union or a State requiring special knowledge of law.

22. *Clause 29.*—The proviso to article 225 of the Constitution as originally enacted was intended to remove the bar that existed before the commencement of the Constitution in respect of the original jurisdiction of the High Courts in revenue matters. The Constitution (Forty-second Amendment) Act omitted this proviso. This clause seeks to restore the said proviso.

23. *Clause 30.*—Subject to a modification, this clause seeks to restore, article 226 to the form in which it was prior to its amendment by the Constitution (Forty-second Amendment) Act. The modification is for the purpose of providing that in cases in which an interim order is made, *ex parte*, on or in any proceedings relating to a petition under article 226, the party against whom such order is made may make an application to the High Court for the vacation of such order and furnish a copy of such application to the party in whose favour such order has been made or the counsel of such party. It is also being provided that if the High Court fails to dispose of the application within a period of two weeks from the date on which it is received by the High Court or from the date on which the copy of such application is furnished to the party against whom it is made, whichever is later, the interim order shall, on the expiry of the said period, stand vacated. Where the High Court is closed on the last day of the said period, the interim order will stand vacated only if the application is not disposed of before the expiry of the next day on which the High Court is open.

24. *Clause 31.*—This clause seeks to restore article 227 of the Constitution (relating to power of superintendence of High Court) to the form in which it was prior to its amendment by the Constitution (Forty-second Amendment) Act.

25. *Clause 32.*—See paragraph 12 above.

26. *Clause 33.*—This clause seeks to omit article 257A of the Constitution relating to deployment of armed forces or other forces of the Union to States. The said article was inserted in the Constitution by the Constitution (Forty-second Amendment) Act.

27. *Clause 34.*—See paragraph 1 above.

28. *Clause 35.*—This clause seeks to omit Part XIVA of the Constitution relating to administrative tribunals and tribunals for other matters in place of High Courts. The said Part XIVA was inserted by the Constitution (Forty-second Amendment) Act.

29. *Clauses 36 and 37.*—Clause 37 seeks to omit article 329A relating to special provisions as to elections to Parliament in the case of Prime Minister and Speaker. The said article 329A was inserted by the Constitution (Thirty-ninth Amendment) Act, 1975. The amendment to article 329 proposed in clause 36 is of a consequential nature and is for the purpose of omitting the reference therein to article 329A.

30. *Clause 38.*—This clause seeks to amend article 352 relating to Proclamation of Emergency to provide for various safeguards against abuse of powers under the article. In the first place, the ground of "internal disturbance" is being substituted by the ground of "armed rebellion" to exclude scope for Proclamation of Emergency in cases of internal disturbance not involving armed rebellion. In the second place, it is being provided that the President shall not issue a Proclamation of Emergency unless the decision of the Cabinet that such a Proclamation may be issued has been communicated to him in writing. In the third place, it is being provided that a Proclamation of Emergency would require to be approved within a period of one month (instead of two months as provided at present) by resolution of both the Houses of Parliament and that such resolution should be by a majority of the total membership of each House and not less than two-thirds of the majority of the members present and voting in each House instead of a simple majority provided at present. In the fourth place, it is being provided that for the continuance of the Emergency, approval by resolution of both Houses would be required every six months. In the fifth place, provision is being made that a Proclamation of Emergency would cease to be operative whenever a resolution to that effect is adopted by the Lok Sabha by a simple majority of the members of the House present and voting. It is also being provided that not less than one-tenth of the total membership of the Lok Sabha may, by notice, requisition a meeting of the Lok Sabha for the purpose of considering the continuance of a Proclamation of Emergency.

Provision has also been made for the omission of clause (5) of article 352, which was inserted by the Constitution (Thirty-eighth Amendment) Act, 1975 and which makes the satisfaction of the President as to the existence of a grave Emergency necessitating the issue of a Proclamation of Emergency final.

31. *Clause 39.*—This clause seeks to amend article 356 of the Constitution relating to the President's power to issue a Proclamation in case of failure of constitutional machinery in a State. The article is being amended to specify that such a Proclamation will, upon its being approved first by resolutions by both Houses, continue for six months from the date of issue of Proclamation and that upon its being approved likewise on a second occasion, it would continue for a further period of six months. The article is also being amended to specify that a resolution

with respect to the continuance in force of a Proclamation under the article for any period beyond the expiration of one year from the date of issue of such Proclamation shall not be passed by either House of Parliament unless a Proclamation of Emergency is in operation at the time of the passing of such resolution and the Election Commission certifies that the continuance in force of the Proclamation under the article during the period specified in such resolution is necessary on account of difficulties in holding elections to the Legislative Assembly of the State concerned.

32. *Clause 40.*—This clause seeks to amend article 358 relating to the suspension of provisions of article 19 during Emergencies. By virtue of the amendments, the provisions of article 19 will become suspended only in the case of a Proclamation of Emergency issued on the ground of war or external aggression and not in the case of a Proclamation of Emergency issued on the ground of armed rebellion. Further, the suspension of article 19 under article 358 will not apply in relation to any law which does not contain a recital to the effect that such law is in relation to the Proclamation of Emergency in operation when it is made or to any executive action taken otherwise than under a law containing such a recital.

33. *Clause 41.*—This clause seeks to make two amendments to article 359 of the Constitution relating to suspension of the enforcement of the rights conferred by Part III during Emergencies. The first amendment is for providing that the enforcement of the right to life and personal liberty under article 21 cannot be suspended. The second amendment is for providing that the suspension of the enforcement of any right under the article will not apply in relation to any law which does not contain a recital to the effect that such law is in relation to the Proclamation of Emergency in operation when it is made or to any executive action taken otherwise than under a law containing such a recital.

34. *Clause 42.*—This clause seeks to make two amendments in article 360 of the Constitution. The first amendment is of a drafting nature and is for the purpose of making the provisions of clause (2) of article 360 self-contained. At present the said clause (2) incorporates by reference the provisions of clause (2) of article 352. Since clause (2) of article 352 is being amended, it has become necessary to make clause (2) of article 360 self-contained. The second amendment is for omitting clause (5) of article 360 which was inserted by the Constitution (Thirty-eighth Amendment) Act and which makes the satisfaction of the President as to the arising of a situation whereby the financial stability or credit of India or any part of the territory thereof is threatened, final and conclusive.

35. *Clause 43.*—This clause seeks to insert a new article 361A in the Constitution. The new article provides for constitutional protection in respect of publication of proceedings of Parliament and of State Legislatures. The protection will not be available in respect of proceedings of secret sittings.

36. *Clause 44.*—This clause seeks to amend article 366 of the Constitution to include therein provisions for explaining the significance of the expressions "SECULAR" and "SOCIALIST" as used in the Preamble.

37. *Clause 45*—This clause seeks to amend article 368 of the Constitution relating to the power of Parliament to amend the Constitution. Apart from omitting clauses (4) and (5) which were inserted in the article by the Constitution (Forty-second Amendment) Act, 1976, for taking away the jurisdiction of the courts in respect of validity of constitutional amendments, this clause seeks to provide that amendments which would have the effect of—

(a) impairing the secular or democratic character of the Constitution; or

(b) abridging or taking away the rights of citizens under Part III; or

(c) prejudicing or impeding free and fair elections to the House of the People or the Legislative Assemblies of the States on the basis of adult suffrage; or

(d) compromising the independence of the judiciary,

would require to be approved by the people of India at a referendum. Any amendment for modifying or omitting the requirement as to such referendum would also require to be approved at such a referendum. In place of the existing clauses (4) and (5) of article 368, sub-clause (b) of clause 45 seeks to substitute three new clauses (4), (5) and (6). New clause (4) provides that every referendum will be through a poll. All persons eligible to be voters at elections to Lok Sabha will be eligible to vote. If fifty one per cent. or more of the eligible voters vote at such a poll and a majority of the voters voting at such a poll approve an amendment, the amendment will be deemed to have been approved. New clause (5) seeks to vest the superintendence, direction and control of referenda in the Election Commission. The result of a referendum as declared by the Election Commission will be final. New clause (6) seeks to empower Parliament to provide by law for matters relating to or in connection with referenda.

38. *Clause 46*.—See paragraph 9.

39. *Clause 47*.—This clause seeks to amend the Seventh Schedule to the Constitution. Sub-clause (a) of this clause seeks to omit entry 2A of the Union List relating to deployment of armed forces of the Union to States. The omission is consequential to the omission of article 257A (See paragraph 26 above).

Sub-clause (b) seeks to amend the State List. The amendments proposed in items (i) and (ii) to entries 1 and 2 of the State List are consequential to the proposed omission of entry 2A of the Union List. The amendments proposed in items (iii) and (iv) are for including the entries relating to education and forest in the State List and for restoring the position as it obtained before the Constitution (Forty-second Amendment) Act. The amendment in item (v) to entry 41 of the State List is consequential to the insertion of a new entry 11B in the Concurrent List under sub-clause (c) (i)

Sub-clause (c).—Item (i) of this sub-clause seeks to insert a new entry relating to adjudication or trial by tribunals of disputes and complaints with respect to recruitment and conditions of service of persons

appointed to public services and posts in connection with the affairs of a State or of a local or other authority subject to the control of a State Government. The proposed entry and entry 70 of the Union List will facilitate the creation of common tribunals for adjudication or trial of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of a State or of a local or other authority subject to the control of the Central Government or a State Government.

Item (ii) of sub-clause (c) seeks to omit entry 17A of the Concurrent List relating to forests and it is consequential to the inclusion of forests in the State List.

Item (iii) of sub-clause (c) seeks to substitute a new entry for entry 25 of the Concurrent List and it is consequential to the inclusion of education in the State List.

40. Clause 48.—This clause seeks to amend the Ninth Schedule for omitting entries 87 [the Representation of the People Act, 1951, the Representation of the People (Amendment) Act, 1974, and the Election Laws (Amendment) Act, 1975], 92 (the Maintenance of Internal Security Act, 1971) and 130 (the Prevention of Publication of Objectionable Matter Act, 1976).

41. Clause 49.—Sections 18, 19, 21, 22, 31, 32, 34 and 35 of the Constitution (Forty-second Amendment) Act, have not been brought into force. In addition to omitting these sections, this clause seeks to omit section 58 (special provisions as to pending petitions under article 226) and section 59 (power of the President to remove difficulties) of the said Act.

BILL No. 89 OF 1978

A Bill to provide for the alteration of boundaries of the States of Haryana and Uttar Pradesh and for matters connected therewith.

BE it enacted by Parliament in the Twenty-ninth Year of the Republic of India as follows:—

PART I

PRELIMINARY

Short title. 1. This Act may be called the Haryana and Uttar Pradesh (Alteration of Boundaries) Act, 1978.

Defini- 2. In this Act, unless the context otherwise requires,—
tions,

(a) "appointed day" means the day which the Central Government may, by notification in the Official Gazette, appoint;

(b) "assembly constituency", "council constituency" and "parliamentary constituency" have the same meanings as in the Representation of the People Act, 1950;

43 of 1950.

(c) "fixed boundaries" means the boundaries demarcated under the provisions of section 3;

(d) "law" includes any enactment, Ordinance, regulation, order, bye-law, rule, scheme, notification or other instrument having the force of law in the whole or in any part of the State of Haryana or Uttar Pradesh;

(e) "notified order" means an order published in the Official Gazette;

(f) "prescribed" means prescribed by rules made under this Act;

(g) "present deep stream line" means the deep stream line of the river Yamuna as verified and determined by the Survey of India during the months of November, 1974, December, 1974, January, 1975 and February, 1975;

(h) "sitting member", in relation to either House of Parliament or of the Legislature of a State, means a person who immediately before the appointed day is a member of that House;

(i) "transferred territories" means,—

(a) in relation to the State of Haryana, the territories transferred by this Act from that State to the State of Uttar Pradesh, and

(b) in relation to the State of Uttar Pradesh, the territories transferred by this Act from that State to the State of Haryana;

(j) any reference to a district of a State shall be construed as a reference to the area physically comprised within that district immediately before the appointed day.

PART II

ALTERATION OF BOUNDARIES

3. (1) As from the appointed day, the boundary between the Karnal and Sonapat districts of the State of Haryana and the Saharanpur, Muzaffarnagar and Meerut districts of the State of Uttar Pradesh and the boundary between the Gurgaon district of the State of Haryana and the Bulandshahr and Aligarh districts of the State of Uttar Pradesh which at present is the deep stream of the river Yamuna, shall be altered to and replaced by fixed boundaries.

Replace-
ment of
fluctuat-
ing bound-
aries
by fixed
bounda-
ries.

(2) The said fixed boundaries shall be demarcated by an authority appointed in this behalf by the Central Government so as to be generally in conformity with the fixed boundaries described in the Schedule.

(3) For the purposes of such demarcation,—

(a) the decision of the said authority on any matter relating to the interpretation of any part of the description of the fixed boundary given in the Schedule shall be final;

(b) the said authority shall have power to determine the location of the points at which the boundary pillars shall be constructed and to specify the State Government which shall be responsible for the construction and maintenance of the boundary pillars at such points according to such specifications as that authority may indicate (the

pillars of the same specifications being apportioned, as far as practicable, equally between the two State Governments), the decision of the said authority in regard to these matters being final;

(c) it shall be lawful for the said authority and for any person specified by such authority to enter upon and survey any area in the vicinity of any of the fixed boundaries described in the Schedule and to do all other acts as may be necessary.

(4) The authority referred to in sub-section (2) shall also prepare maps of the areas on both sides of the fixed boundaries and in the vicinity thereof showing—

(a) the present deep stream line and the fixed boundary in relation to it; and

(b) the names and boundaries of the villages on both sides of the fixed boundary as indicated by the State Government concerned with reference to the revenue records of that Government,

and send authenticated copies thereof to the Central Government and to the State Governments of Haryana and Uttar Pradesh.

Transfer
of terri-
tories.

4. (1) As from the appointed day,—

(a) there shall be added to the State of Haryana all the territories of the State of Uttar Pradesh which lie on the Haryana side of the fixed boundaries, and the said territories shall thereupon cease to form part of the State of Uttar Pradesh; and

(b) there shall be added to the State of Uttar Pradesh all the territories of the State of Haryana which lie on the Uttar Pradesh side of the fixed boundaries, and the said territories shall thereupon cease to form part of the State of Haryana.

(2) Each of the State Governments of Haryana and Uttar Pradesh shall, by order in the Official Gazette of the State, provide for the administration, as from the appointed day, of the territories transferred to that State under sub-section (1) by including them or any part of them in such district, sub-division, police-station or other administrative unit as may be specified in the order.

Amend-
ment
of First
Schedule
to the
Constitu-
tion.

5. As from the appointed day, in the First Schedule to the Constitution, under the heading "I. THE STATES"—

(a) for the entry against "13. Uttar Pradesh", the following shall be substituted, namely:—

"The territories which immediately before the commencement of this Constitution were either comprised in the Province known as the United Provinces or were being administered as if they formed part of that Province, the territories specified in clause (b) of sub-section (1) of section 3 of the Bihar and Uttar Pradesh (Alteration of Boundaries) Act, 1968, and the territories specified in clause (b) of sub-section (1) of section 4 of the Haryana and Uttar Pradesh (Alteration of Boundaries) Act, 1978, but excluding the territories specified in clause (a) of sub-

section (1) of section 3 of the Bihar and Uttar Pradesh (Alteration of Boundaries) Act, 1968, and the territories specified in clause (a) of sub-section (1) of section 4 of the Haryana and Uttar Pradesh (Alteration of Boundaries) Act, 1978.”;

(b) for the entry against “17. Haryana”, the following shall be substituted, namely:—

“The territories specified in sub-section (1) of section 3 of the Punjab Reorganisation Act, 1966 and the territories specified in clause (a) of sub-section (1) of section 4 of the Haryana and Uttar Pradesh (Alteration of Boundaries) Act, 1978, but excluding the territories specified in clause (b) of sub-section (1) of section 4 of that Act.”.

PART III

REPRESENTATION IN THE LEGISLATURES

6. As from the appointed day, any reference in any order relating to delimitation of parliamentary constituencies, assembly constituencies or council constituencies—

Construc-
tion of
delimita-
tion
orders.

(a) (i) to the State of Haryana, shall be construed as including the territories transferred to that State from the State of Uttar Pradesh under clause (a) of sub-section (1) of section 4, but excluding the territories transferred from the State of Haryana to the State of Uttar Pradesh under clause (b) of that sub-section;

(ii) to any district, sub-division, police-station or other administrative unit in the State of Haryana, shall be construed as including that part of the territories, if any, transferred to that State, which is included in that district, sub-division, police-station or other administrative unit by order made under sub-section (2) of section 4;

(b) (i) to the State of Uttar Pradesh, shall be construed as including the territories transferred to that State from the State of Haryana under clause (b) of sub-section (1) of section 4, but excluding the territories transferred from the State of Uttar Pradesh to the State of Haryana under clause (a) of that sub-section;

(ii) to any district, sub-division, police-station or other administrative unit in the State of Uttar Pradesh, shall be construed as including that part of the territories, if any, transferred to that State, which is included in that district, sub-division, police-station or other administrative unit by order made under sub-section (2) of section 4.

7. (1) Every sitting member of the House of the People representing any parliamentary constituency the extent of which has been altered by virtue of the provisions of this Act shall, notwithstanding such alteration, be deemed, as from the appointed day, to have been elected to that House by that constituency as so altered.

Provision
as to
sitting
members.

(2) Every sitting member of the Legislative Assembly of the State of Haryana or Uttar Pradesh representing any assembly constituency the extent of which has been altered by virtue of the provisions of this Act

shall, notwithstanding such alteration, be deemed, as from the appointed day, to have been elected to the said Legislative Assembly by that constituency as so altered.

(3) Every sitting member of the Legislative Council of the State of Uttar Pradesh representing any council constituency the extent of which has been altered by virtue of the provisions of this Act shall, notwithstanding such alteration, be deemed, as from the appointed day, to have been elected to the said Legislative Council by that constituency as so altered.

PART IV

HIGH COURTS

Extension
of juris-
diction of,
and trans-
fer of
proceed-
ings to,
High
Court of
Punjab
and
Haryana.

8. (1) Except as hereinafter provided—

(a) the jurisdiction of the High Court of Punjab and Haryana shall, as from the appointed day, extend to the territories transferred by this Act from the State of Uttar Pradesh to the State of Haryana; and

(b) the High Court of Judicature at Allahabad shall, as from that day, have no jurisdiction in respect of the said territories.

(2) Such proceedings pending in the High Court of Judicature at Allahabad immediately before the appointed day as are certified by the Chief Justice of that High Court, having regard to the place of accrual of the cause of action and other circumstances, to be proceedings which ought to be heard and decided by the High Court of Punjab and Haryana shall, as soon as may be after such certification, be transferred to the High Court of Punjab and Haryana.

(3) Notwithstanding anything contained in sub-sections (1) and (2), but save as hereinafter provided, the High Court of Judicature at Allahabad shall have, and the High Court of Punjab and Haryana shall not have, jurisdiction to entertain, hear or dispose of appeals, applications for leave to appeal to the Supreme Court, applications for review and other proceedings, where any such proceedings seek any relief in respect of any order passed by the High Court of Judicature at Allahabad before the appointed day:

Provided that if, after such proceedings have been entertained by the High Court of Judicature at Allahabad, it appears to the Chief Justice of that High Court that they ought to be transferred to the High Court of Punjab and Haryana, he shall order that they shall be so transferred and such proceedings shall thereupon be transferred accordingly.

(4) Any order made by the High Court of Judicature at Allahabad—

(a) before the appointed day in any proceedings transferred to the High Court of Punjab and Haryana by virtue of sub-section (2), or

(b) in any proceedings with respect to which the High Court of Judicature at Allahabad retains jurisdiction by virtue of sub-section (3),

shall, for all purposes, have effect not only as an order of the High Court of Judicature at Allahabad, but also as an order made by the High Court of Punjab and Haryana.

(5) Subject to any rule made or direction given by the High Court of Punjab and Haryana, any such person who immediately before the appointed day is an advocate entitled to practise in the High Court of Judicature at Allahabad as may be specified in this behalf by the Chief Justice of the High Court of Punjab and Haryana having regard to the transfer of territories from the State of Uttar Pradesh to the State of Haryana, shall be recognised as an advocate entitled to practise in the High Court of Punjab and Haryana.

9. (1) Except as hereinafter provided—

(a) the jurisdiction of the High Court of Judicature at Allahabad shall, as from the appointed day, extend to the territories transferred by this Act from the State of Haryana to the State of Uttar Pradesh; and

(b) the High Court of Punjab and Haryana shall, as from that day, have no jurisdiction in respect of the said territories.

Extension
of juris-
diction of,
and trans-
fer of pro-
ceedings
to, High
Court at
Allahabad

(2) Such proceedings pending in the High Court of Punjab and Haryana immediately before the appointed day as are certified by the Chief Justice of that High Court, having regard to the place of accrual of the cause of action and other circumstances, to be proceedings which ought to be heard and decided by the High Court of Judicature at Allahabad shall, as soon as may be after such certification, be transferred to the High Court of Judicature at Allahabad.

(3) Notwithstanding anything contained in sub-sections (1) and (2), but save as hereinafter provided, the High Court of Punjab and Haryana shall have, and the High Court of Judicature at Allahabad shall not have, jurisdiction to entertain, hear or dispose of appeals, applications for leave to appeal to the Supreme Court, applications for review and other proceedings, where any such proceedings seek any relief in respect of any order passed by the High Court of Punjab and Haryana before the appointed day:

Provided that if, after such proceedings have been entertained by the High Court of Punjab and Haryana, it appears to the Chief Justice of that High Court that they ought to be transferred to the High Court of Judicature at Allahabad, he shall order that they shall be so transferred and such proceedings shall thereupon be transferred accordingly.

(4) Any order made by the High Court of Punjab and Haryana—

(a) before the appointed day in any proceedings transferred to the High Court of Judicature at Allahabad by virtue of sub-section (2); or

(b) in any proceedings with respect to which the High Court of Punjab and Haryana retains jurisdiction by virtue of sub-section (3), shall, for all purposes, have effect not only as an order of the High Court of Punjab and Haryana, but also as an order made by the High Court of Judicature at Allahabad.

(5) Subject to any rule made or direction given by the High Court of Judicature at Allahabad, any such person who immediately before the appointed day is an advocate entitled to practise in the High Court of Punjab and Haryana as may be specified in this behalf by the Chief Justice of the High Court of Judicature at Allahabad having regard to the transfer of territories from the State of Haryana to the State of Uttar Pradesh shall be recognised as an advocate entitled to practise in the High Court of Judicature at Allahabad.

Right to appear in any proceedings transferred under section 8 or section 9.

10. Any person who immediately before the appointed day is an advocate entitled to practise in the High Court of Punjab and Haryana or the High Court of Judicature at Allahabad and was authorised to appear in any proceedings transferred under section 8 or section 9 shall have the right to appear in the High Court to which the proceedings have been transferred in relation to those proceedings.

Interpretation.

11. For the purposes of sections 8 and 9,—

(a) proceedings shall be deemed to be pending in the High Court of Punjab and Haryana or the High Court of Judicature at Allahabad until that Court has disposed of all issues between the parties, including any issue with respect to the taxation of the costs of the proceedings and shall include appeals, applications for leave to appeal to the Supreme Court, applications for review, petitions for revision and petitions for writs;

(b) references to the High Court of Punjab and Haryana or the High Court of Judicature at Allahabad shall be construed as including references to a Judge or division court thereof, and references to an order made by a court or a Judge shall be construed as including references to a sentence, judgment or decree passed or made by that court or Judge.

PART V

AUTHORISATION OF EXPENDITURE

Appropriation of moneys for expenditure in transferred territories under existing appropriation Acts.

12. (i) As from the appointed day, any Act passed by the Legislature of the State of Haryana or Uttar Pradesh before that day for the appropriation of any moneys out of the Consolidated Fund of the State to meet any expenditure in respect of any part of the financial year in which the appointed day falls shall have effect also in relation to the territories transferred to that State by the provisions of Part II and it shall be lawful for the State Government to spend any amount on any service in those territories out of the amount authorised by such Act to be expended for that service during the financial year in that State.

(2) The Governor of Haryana or of Uttar Pradesh may, after the appointed day, authorise such expenditure from the Consolidated Fund of the State as he deems necessary for any purpose or service in the territories transferred to that State for a period of not more than six months beginning with the appointed day pending the sanction of such expenditure by the Legislature of the State.

13. The reports of the Comptroller and Auditor-General of India referred to in clause (2) of article 151 of the Constitution relating to the accounts of the State of Haryana or Uttar Pradesh in respect of any financial year ending before the appointed day shall be submitted to the Governor of each of the States of Haryana and Uttar Pradesh who shall cause them to be laid before the Legislature of the State.

Reports
relating to
accounts
of Har-
yana and
Uttar
Pradesh.

PART VI

APPORTIONMENT OF ASSETS AND LIABILITIES

14. (1) Subject to the other provisions of this Part, all land and all stores, articles and other goods belonging to the State of Haryana or Uttar Pradesh in the transferred territories shall, as from the appointed day, pass to the State to which the territories are transferred.

Land and
goods.

(2) In this section, the expression "land" includes immovable property of every kind and any rights in or over such property.

15. The right of the State of Haryana or Uttar Pradesh to recover arrears of any tax or duty on property situate in the transferred territories, including land revenue, or to recover arrears of any other tax or duty in any case where the place of assessment of that tax or duty is in the transferred territories shall belong to the State to which the territories are transferred.

Arrears
of taxes.

16. The right to recover any loans or advances made before the appointed day by the State of Haryana or Uttar Pradesh to any local body, society, agriculturist, or other person in the transferred territories shall belong to the State to which the territories are transferred.

Right to
recover
loans and
advances.

17. The liability of the State of Haryana or Uttar Pradesh to refund any tax or duty on property situate in the transferred territories including land revenue, collected in excess shall be the liability of the State to which the territories are transferred, and the liability of the State of Haryana or Uttar Pradesh to refund any other tax or duty collected in excess in any case where the place of assessment of the tax or duty is in the transferred territories shall also be the liability of the State to which the territories are transferred.

Refund
of taxes
collected
in excess.

18. The liability of the State of Haryana or Uttar Pradesh in respect of any civil deposit or local fund deposit made in the transferred territories shall, as from the appointed day, be the liability of the State to which the territories are transferred.

Deposits.

19. (1) Where, before the appointed day, the State of Haryana or Uttar Pradesh has made any contract in the exercise of its executive power for any purposes of the State, that contract shall be deemed to have been made in the exercise of the executive power—

Contracts.

(a) if such purposes are, as from that day, purposes relatable exclusively to the transferred territories, of the State to which the territories are transferred; and

(b) in any other case, of the State which made the contract,

and all rights and liabilities which have accrued, or may accrue, under any such contract shall, to the extent to which they are rights or liabilities of the State which made the contract, be the rights or liabilities of the State specified in clause (a) or clause (b) above.

(2) For the purposes of this section, there shall be deemed to be included in the liabilities which have accrued or may accrue under any contract—

(a) any liability to satisfy an order or award made by any court or other tribunal in proceedings relating to the contract; and

(b) any liability in respect of expenses incurred in or in connection with any such proceedings.

(3) This section shall have effect subject to the other provisions of this Part relating to the apportionment of liabilities in respect of loans, guarantees and other financial obligations.

Liability
in respect
of action-
able
wrong.

20. Where, immediately before the appointed day, the State of Haryana or Uttar Pradesh is subject to any liability in respect of an actionable wrong, other than breach of contract, that liability shall,—

(a) if the cause of action arose wholly within the transferred territories, be a liability of the State to which the territories are transferred; and

(b) in any other case, continue to be a liability of the State which, immediately before that day, was subject to such liability.

Liability
as
guarantor
of co-
operative
societies.

21. Where, immediately before the appointed day, the State of Haryana or Uttar Pradesh is liable as guarantor in respect of any liability of a registered co-operative society, that liability shall,—

(a) if the area of the society's operations is limited to the transferred territories, be a liability of the State to which the territories are transferred; and

(b) in any other case, continue to be a liability of the State which, immediately before that day, was subject to such liability.

Items in
suspense.

22. If any item in suspense is ultimately found to affect an asset or liability of the nature referred to in any of the foregoing provisions of this Part, it shall be dealt with in accordance with that provision.

Appor-
tionment
of assets
or
liabilities
by agree-
ment.

23. Where the States of Haryana and Uttar Pradesh agree that the benefit or burden of any particular asset or liability should be apportioned between them in a manner other than that provided for in the foregoing provisions of this Part, then, notwithstanding anything contained therein, the benefit or burden of that asset or liability shall be apportioned in the manner agreed upon.

Power of
Central
Govern-
ment to
order allo-
cation or
adjust-
ment in
certain
cases.

24. Where, by virtue of any of the provisions of this Part, either of the States of Haryana or Uttar Pradesh becomes entitled to any property or obtains any benefits or becomes subject to any liability, and the Central Government, on a reference made within a period of three years from the appointed day by either of the States, is of opinion that it is just and equitable that that property or those benefits should be transferred to, or shared with, the other State or that a contribution towards that liability should be made by the other State, the said property or benefits

shall be allocated in such manner between the two States, or the other State shall make to the State subject to the liability such contribution in respect thereof, as the Central Government may, after consultation with the two State Governments, by order, determine.

25. All sums payable by either the State of Haryana or Uttar Pradesh to the other State by virtue of the provisions of this Part shall be charged on the Consolidated Fund of the State by which such sums are payable.

Expenditure to be charged on the Consolidated Fund.

PART VII

LEGAL AND MISCELLANEOUS PROVISIONS

26. As from the appointed day,—

83 of 1951.

(a) the Financial Corporations constituted under the State Financial Corporations Act, 1951, for the States of Haryana and Uttar Pradesh; and

54 of 1948.

(b) the State Electricity Boards constituted under the Electricity (Supply) Act, 1948, for the said States,

State Financial Corporations and State Electricity Boards.

shall be deemed to have been constituted for those States with their areas as altered by the provisions of section 4.

27. The provisions of section 4 shall not be deemed to have effected any change in the territories to which any law in force immediately before the appointed day extends or applies, and territorial references in any such law to the State of Haryana or Uttar Pradesh shall, until otherwise provided by a competent Legislature or other competent authority, be construed as meaning the territories within that State immediately before the appointed day.

Territorial extent of laws.

28. For the purpose of facilitating the application of any law in relation to the State of Haryana or Uttar Pradesh, the appropriate Government may, before the expiration of two years from the appointed day, by order, make such adaptations and modifications of the law, whether by way of repeal or amendment as may be necessary or expedient, and thereupon every such law shall have effect subject to the adaptations or modifications so made until altered, repealed or amended by a competent Legislature or other competent authority.

Power to adapt laws.

Explanation.—In this section, the expression “appropriate Government” means as respects any law relating to a matter enumerated in the Union List, the Central Government, and as respects any other law, the State Government.

29. Notwithstanding that no provision or insufficient provision has been made for the adaptation of a law made before the appointed day, any court, tribunal or authority, required or empowered to enforce such law may, for the purpose of facilitating its application in relation to the State of Haryana or Uttar Pradesh, construe the law in such manner, without affecting the substance, as may be necessary or proper in regard to the matter before the court, tribunal or authority.

Power to construe laws.

Legal
proceed-
ings.

30. Where, immediately before the appointed day, the State of Haryana or Uttar Pradesh is a party to any legal proceedings with respect to any property, rights or liabilities transferred to the other State under this Act, the other State shall be deemed to be substituted for the State from which such property, rights or liabilities are transferred as a party to those proceedings, or added as a party thereto, as the case may be, and the proceedings may continue accordingly.

Transfer
of
pending
proceed-
ings.

31. (1) Every proceeding pending immediately before the appointed day before a court (other than a High Court), tribunal, authority or officer in any area which on that day falls within the State of Haryana or Uttar Pradesh shall, if it is a proceeding relating exclusively to any part of the territories which as from that day are the territories of the other State, stand transferred to the corresponding court, tribunal, authority or officer in the other State.

(2) If any question arises as to whether any proceeding should stand transferred under sub-section (1), it shall be referred to the High Court having jurisdiction in respect of the area in which the court, tribunal, authority or officer before which, or before whom, such proceeding is pending on the appointed day, is functioning, and the decision of that High Court shall be final.

(3) In this section,—

(a) "proceeding" includes any suit, case or appeal; and

(b) "corresponding court, tribunal, authority or officer" in a State means—

(i) the court, tribunal, authority or officer in which, or before whom, the proceeding would have lain if the proceeding had been instituted after the appointed day, or

(ii) in case of doubt, such court, tribunal, authority or officer in that State as may be determined after the appointed day by the Government of that State, or before the appointed day by the Government of the other State, to be the corresponding court, tribunal, authority or officer.

Construc-
tion of
boundary
pillars,
etc.

32. (1) It shall be lawful for the State Government which is responsible for the construction of any boundary pillar under sub-section (3) of section 3 to cause such pillar to be constructed and maintained and no suit, prosecution or other legal proceeding shall lie against the State Government or any of its officers for anything in good faith done or intended to be done under this section.

(2) The boundary pillars shall be inspected jointly by the officers of the State Governments of Haryana and Uttar Pradesh in accordance with such rules as the Central Government may make in this behalf.

(3) Whoever wilfully removes or injures any boundary pillars shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence under sub-section (3) may be inquired into and tried by a court in either of the States of Haryana and Uttar Pradesh.

33. All things done and all steps taken before the commencement of this Act in connection with the demarcation of the fixed boundaries shall, in so far as they are in conformity with the provisions of sub-sections (2) and (3) of section 3, be deemed to have been done in accordance with law.

Validity of demarcation done before commencement of Act.

34. The provisions of this Act shall have effect notwithstanding any law, custom or usage which is inconsistent therewith.

Effect of provisions inconsistent with other laws.

35. (1) If any difficulty arises in giving effect to the provisions of this Act, the President may, by notified order, do anything, not inconsistent with such provisions which appears to him to be necessary or expedient for the purpose of removing the difficulty.

Power to remove difficulties.

(2) Every order made under this section shall be laid before each House of Parliament.

36. (1) The Central Government may, by notification in the Official Gazette, make rules to give effect to the provisions of this Act.

Power to make rules.

(2) Every rule made by the Central Government under this section shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

THE SCHEDULE

[See section 3 (2)]

Description of the fixed boundaries

1. The fixed boundary between the Karnal and Sonapat districts of Haryana on the one side and the Saharanpur, Muzaffarnagar and Meerut districts of Uttar Pradesh on the other side shall be the present deep stream line.

2. (1) The fixed boundary between the Gurgaon district of Haryana on the one side and the Bulandshahr and Aligarh districts of Uttar Pradesh on the other side shall commence from the point where the present deep stream line crosses the north-west boundary of BASANTPUR and proceed along the said boundary up to the point where it crosses the north bank of the river Yamuna as ascertained at the 1971-72 river survey conducted by the Survey of India.

(2) It shall then proceed along the said north bank up to the point where it meets the boundary between BASANTPUR and SALARPUR; thence along the northern and eastern boundaries of SALARPUR, the eastern boundary of ASALATPUR, the north-eastern boundary of DADSIA, the northern and north-eastern boundaries of KIRAWLI, the northern boundary of LALPUR, the northern and eastern boundaries of MAHABATPUR, the eastern boundary of MUZZAMABAD, the eastern boundary of BHASKOLA, the eastern and northern boundaries of RAJPUR KALAN including CHAK PHULERA, the northern and eastern boundaries of SHIKARGAH, the northern and eastern boundaries of AMINPUR, the eastern boundary of CHIRSI, the eastern boundary of AKBARPUR, the eastern boundary of MOZAMABAD-MAZRA-SHEIKHPUR, the eastern boundary of SHEIKHPUR, the eastern boundary of MANJHAWLI, the eastern boundary of GARHI BEGAMPUR, the south-eastern boundary of DALELGARH, the eastern boundary of NANGLA-MAZRA-CHANDPUR, the northern and eastern boundaries of SHAHJAHANPUR, the eastern boundary of LATIFPUR, the eastern boundary of PARASRAMPUR *alias* DULEHPUR, the eastern boundary of MAKANPUR, the north-eastern boundary of WALIPUR, the western, northern and eastern boundaries of SHEIKHPUR, the northern and the north-eastern boundaries of BEHRAMPUR, and the north-western boundary of NANGLIA up to the point where it meets the present deep stream line.

(3) From this point, it shall proceed along the present deep stream line following the boundary on Uttar Pradesh side of NANGLIA, JHUPPA, BAGHPUR KALAN, BAGHPUR KHURD, SOLRAH, BHOLRA, DOSTPUR, GURWARI and CHANDHAT up to the junction of the old main stream of the river Yamuna and the channel or branch of the river commonly known as the Zair Nala, and thence along the present deep stream line up to the southern boundary of MAHOLI.

Explanation.—In this paragraph,—

(a) any reference to the boundary of a village named in sub-paragraphs (1) and (2) shall be construed as a reference to the boundary of that village as ascertained and mapped at the Settlement of Gurgaon district completed in 1943;

(b) the references to the present deep stream line at the end of sub-paragraph (2) and the beginning of sub-paragraph (3) shall be construed as references to the present deep stream line pertaining to the old main stream of the river Yamuna.

STATEMENT OF OBJECTS AND REASONS

At present the boundary between the States of Haryana and Uttar Pradesh is partly fixed with reference to the boundaries of adjacent border villages and partly variable, being the deep stream of the river Yamuna which often changes its course. Out of the five border districts of Haryana and six of Uttar Pradesh, the boundary between Ambala and Kurukshetra districts of Haryana and Saharanpur district of Uttar Pradesh is fixed, and so is the boundary between Gurgaon district of Haryana and Mathura district of Uttar Pradesh. The deep stream of the Yamuna has all along been declared to be the boundary between Karnal and Sonapat districts of Haryana on the one side and Saharanpur, Muzaffarnagar and Meerut districts of Uttar Pradesh on the other, and also between Gurgaon district of Haryana and Bulandshahr and Aligarh districts of Uttar Pradesh.

2. Attempts were made from time to time in the past to replace the river boundary by a fixed boundary, particularly in the portion covering Ballabgarh tehsil of Gurgaon district, but for one reason or another, these attempts remained inconclusive. Latterly, after the establishment of Haryana as a separate State, the disagreement between the two State Governments over the exact location of the river boundary between Gurgaon and Bulandshahr districts grew more and more pronounced.

3. With a view to settling once for all the problems arising out of the fluctuating boundary, the then Chief Ministers of Uttar Pradesh and Haryana had suggested to the then Home Minister, Shri Uma Shankar Dikshit, in May, 1974 that the latter might agree to arbitrate in this matter in his personal capacity; and that the Award of his arbitration would be accepted by both the parties. Accordingly, Shri Dikshit gave his Award on 14th February, 1975, recommending the replacement of the variable boundary by a fixed boundary described therein. The Bill seeks to give effect to the Award.

4. Clause 27 of the Bill provides that the existing laws shall continue to be in force in the transferred territories until otherwise provided by a competent legislature or other competent authority. To facilitate identification of the transferred territories by the authorities who have to implement the laws, provision has been made for the demarcation of the fixed boundary on land and preparation and supply of maps to the Governments of Haryana and Uttar Pradesh.

5. The Bill also makes the necessary supplemental and incidental provisions relating to the representation in Parliament and State Legislatures, transfer of jurisdiction between the High Courts of Punjab and Haryana and Allahabad, authorisation of expenditure, apportionment of assets and liabilities and certain other matters.

6. As required by the proviso to article 3 of the Constitution, this Bill was referred by the President to the Legislatures of the States of Haryana and Uttar Pradesh for expression of their views.

7. The notes on clauses explain in detail the various provisions of the Bill.

NEW DELHI;
The 3rd May, 1978.

DHANIK LAL MANDAL.

**PRESIDENT'S RECOMMENDATION UNDER ARTICLES 3 AND 117 OF
THE CONSTITUTION OF INDIA**

[Copy of letter No. S-11014/3/78-SR, dated the 3rd May, 1978 from Shri Dhanik Lal Mandal, Minister of State in the Ministry of Home Affairs to the Secretary, Lok Sabha].

The President, having been informed of the subject matter of the Bill to provide for the alteration of boundaries of the States of Haryana and Uttar Pradesh and other matters connected therewith, recommends the introduction of the Bill in Lok Sabha under the proviso to article 3, and its consideration under article 117(3) of the Constitution.

Notes on clauses

Clause 2.—At present, the boundary between the Karnal and Sonapat districts of the State of Haryana and the Saharanpur, Muzaffarnagar and Meerut districts of the State of Uttar Pradesh in the northern sector and the boundary between Gurgaon district of the State of Haryana and the Bulandshahr and Aligarh districts of the State of Uttar Pradesh in the southern sector is the deep stream of the river Yamuna as it emerges after each rainy season. A survey of the river Yamuna was conducted by the Survey of India during 1971-72. In order to take into account any subsequent changes in the deep stream, the deep stream of Yamuna was again verified and determined by the Survey of India during the months of November, 1974, December, 1974, January, 1975 and February, 1975. Sub-clause (g) defines the "present deep stream line" which forms the basis of the fixed boundaries as defined in sub-clause (c).

Clause 3 and Schedule.—The inter-State boundary immediately before the transfer of territories would be the deep stream of Yamuna as it would emerge at the end of the rainy season preceding the transfer. Sub-clause (1) seeks to replace the present deep stream boundaries by fixed boundaries as described in the Schedule. The Schedule to the Bill describes the fixed boundary, but it has to be actually located on the ground and demarcated after making the necessary survey. Sub-clause (2), therefore, provides for the demarcation being done by an authority appointed by the Central Government.

The description of the fixed boundary in the Schedule which follows the Award given by Shri Uma Shankar Dikshit is in terms of "the present deep stream line" and in terms of inter-village boundaries as ascertained and mapped at the Settlement of Gurgaon district completed in the year 1943. Sub-clause (3) seeks to empower the demarcating authority to interpret and take into account the relevant records. This sub-clause also seeks to confer necessary powers on the demarcating authority to conduct survey in the area concerned and to determine the points at which the boundary pillars shall be located and the State which shall be responsible for the construction and maintenance of each such pillar.

As stated above, the village boundaries mentioned in the Schedule relate to the year 1943. Since then, on account of change in the course of Yamuna and consequent transfer of land from one State to another, the village boundaries have undergone change. Sub-clause (4), therefore, provides for the preparation of maps showing the "present deep stream line", the fixed boundary in relation thereto and the names and boundaries of villages as they exist at the time of their preparation; and for authenticated copies of such maps being sent to the Central Government and to the Governments of Haryana and Uttar Pradesh.

Clause 4.—Sub-clause (1) provides for the transfer to the State of Haryana of the territories of the State of Uttar Pradesh lying on the Haryana side of the fixed boundary and for the transfer to the State of Uttar Pradesh of the territories of the State of Haryana lying on the

Uttar Pradesh side of the fixed boundary. Sub-clause (2) provides for the issue of notified orders by the two State Governments providing for the administration of the transferred territories by including them or any part of them in such district, sub-division, police-station or other administrative unit as may be specified in the orders.

Clause 5.—This clause seeks to make consequential amendments in the First Schedule to the Constitution.

Clause 6.—This clause provides for the necessary adjustment of the parliamentary, assembly and council constituencies.

Clause 7.—This clause provides that the sitting members of the House of the People and the State Legislatures representing the constituencies altered by the provisions of the Bill will continue to represent those constituencies as altered.

Clauses 8 to 11.—These clauses provide for the alteration of the jurisdiction of the High Court of Punjab and Haryana and the High Court of Judicature at Allahabad. They also provide for the transfer of proceedings pending in either of the High Courts to the other High Court and enable advocates already engaged in such proceedings to appear and to act in the other High Court in relation to those proceedings.

Clause 12.—This clause makes necessary provisions to enable the two States to incur expenditure on the administration of the territories transferred to them until the expenditure is specifically sanctioned by the appropriate Legislature.

Clause 13.—This clause provides that the audit reports of the Comptroller and Auditor-General of India relating to the accounts of either of the States in respect of any financial year ending before the appointed day shall be submitted to the Governor of each of the two States who shall cause them to be laid before the State Legislature concerned.

Clauses 14 to 25.—These clauses relate to the apportionment of the assets and liabilities of the State Governments in relation to the territories transferred from one State to another and follow generally the corresponding provisions of the Andhra Pradesh and Madras (Alteration of Boundaries) Act, 1959 or the Bombay Reorganisation Act, 1960 or the Bihar and Uttar Pradesh (Alteration of Boundaries) Act, 1968.

Clause 26.—This clause seeks to adjust the jurisdiction of the Financial Corporations and the Electricity Boards of the States of Haryana and Uttar Pradesh in relation to the transferred territories.

Clauses 27 to 31.—These clauses contain provisions regarding continuance of existing laws in the transferred territories, adaptation of these laws, power of courts and tribunals to construe laws, legal proceedings, etc. These provisions follow the corresponding provisions of the States Reorganisation Act, 1956, or the Bihar and Uttar Pradesh (Alteration of Boundaries) Act, 1968.

Clause 32.—Sub-clause (1) provides for the construction and maintenance of the boundary pillars. Sub-clause (2) provides for the inspection of the boundary pillars jointly by the officers of the two State Governments in accordance with such rules as the Central Government may make in this behalf. Sub-clause (3) makes wilful removal or injuring of a boundary pillar an offence. As the boundary pillars would

be located on land which will lie in both the States, doubts might arise as to the place of trial of an offence under sub-clause (3). Hence, sub-clause (4) provides that such offences may be tried in either State.

Clause 33.—Some preliminary action had been initiated in the year 1975 with a view to demarcating the boundary as recommended by Shri Uma Shankar Dikshit so as to minimise the interval between the date of passing of this Bill and the actual transfer of territories. This clause seeks to validate the things already done and action already taken so that to the extent possible, surveys, etc., already made could be utilised.

Clauses 34 and 35.—These clauses follow the corresponding provisions of the States Reorganisation Act, 1956 or the Bihar and Uttar Pradesh (Alteration of Boundaries) Act, 1968.

Clause 36.—This clause enables the Government to make necessary rules to give effect to the provisions of the Act

FINANCIAL MEMORANDUM

Sub-clause (2) of clause 3 of the Bill provides for the demarcation of the fixed boundary by an authority appointed in this behalf by the Central Government. Sub-clause (4) of that clause also provides that the said authority shall prepare maps of the areas on both sides of the fixed boundaries and in the vicinity thereof showing the "present deep stream line" and the fixed boundary in relation to it and also the names and boundaries of the villages on both sides of the fixed boundary. In pursuance of an agreement between the Governments of Haryana and Uttar Pradesh, the expenditure amounting to Rs. 7,29,210 on the surveys of the river Yamuna carried out in 1971-72 and 1974-75 to determine the deep stream channel and also the demarcation of the boundary on the ground carried out in 1975-76 and 1976-77 has already been met by the two State Governments. The printing of maps by the Survey of India will involve a non-recurring expenditure of about Rs. 54,600 from the Consolidated Fund of India. The Governments of Haryana and Uttar Pradesh have agreed to meet this expenditure also in equal proportions. The Bill does not involve any other expenditure from the Consolidated Fund of India.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 28 of the Bill empowers the appropriate Government to adapt existing laws in order to facilitate their application to the States of Haryana and Uttar Pradesh. This power will be available only for a period of two years from the appointed day.

2. Sub-clause (2) of clause 32 of the Bill empowers the Central Government to make rules for joint inspection of the boundary pillars by the officers of the State Governments of Haryana and Uttar Pradesh.

3. Clause 36 of the Bill empowers the Central Government to make rules generally to give effect to the provisions of the Bill when enacted. Such rules will be confined to matters of procedure and other matters of detail.

4. The delegation of legislative power in the clauses referred to above is of a normal character.

BILL No. 90 OF 1978.

A Bill to ban the promotion or conduct of prize chits and money circulation schemes and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Twenty-ninth Year of the Republic of India as follows:—

Short
title
and
extent.

1. (1) This Act may be called the Prize Chits and Money Circulation Schemes (Banning) Act, 1978.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

Defini-
tions.

2. In this Act, unless the context otherwise requires,—

(a) “conventional chit” means a transaction whether called chit, chit fund, *kuri* or by any other name by or under which a person responsible for the conduct of the chit enters into an agreement with a specified number of persons that every one of them shall subscribe a certain sum of money (or certain quantity of grain instead) by way of periodical instalments for a definite period and that each such subscriber shall, in his turn, as determined by lot or by auction or by

tender or in such other manner as may be provided for in the chit agreement, be entitled to a prize amount.

Explanation.—In this clause “prize amount” shall mean the amount, by whatever name called, arrived at by deducting from out of the total amount paid or payable at each instalment by all the subscribers,

(i) the commission charged as service charges as a promoter or a foreman or an agent; and

(ii) any sum which a subscriber agrees to forego, from out of the total subscriptions of each instalment, in consideration of the balance being paid to him,

(b) “money” includes a cheque, postal order, demand draft, telegraphic transfer or money order;

(c) “money circulation scheme” means any scheme, by whatever name called, for the making of quick or easy money, or for the receipt of any money or valuable thing as the consideration for a promise to pay money, on any event or contingency relative or applicable to the enrolment of members into the scheme, whether or not such money or thing is derived from the entrance money of the members of such scheme or periodical subscriptions;

(d) “prescribed” means prescribed by rules made under this Act;

(e) “prize chit” includes any transaction or arrangement by whatever name called under which a person collects whether as a promoter, foreman, agent or in any other capacity, monies in one lump sum or in instalments by way of contributions or subscriptions or by sale of units, certificates or other instruments or in any other manner or as membership fees or admission fees or service charges to or in respect of any savings, mutual benefit, thrift, or any other scheme or arrangement by whatever name called, and utilises the monies so collected or any part thereof or the income accruing from investment or other use of such monies for all or any of the following purposes, namely:—

(i) giving or awarding periodically or otherwise to a specified number of subscribers as determined by lot, draw or in any other manner, prizes or gifts in cash or in kind, whether or not the recipient of the prize or gift is under a liability to make any further payment in respect of such scheme or arrangement;

(ii) refunding to the subscribers or such of them as have not won any prize or gift, the whole or part of the subscriptions, contributions or other monies collected, with or without any bonus, premium, interest or other advantage by whatever name called, on the termination of the scheme or arrangement, or, on or after the expiry of the period stipulated therein,

but does not include a conventional chit;

(f) “Reserve Bank” means the Reserve Bank of India constituted under the Reserve Bank of India Act, 1934.

Banning
of prize
chits
and
money
circula-
tion
schemes
or enrol-
ment as
members
or partici-
pation
therein.

Penalty
for
contra-
vening
the pro-
visions
of section
3.

Penalty
for
other
offences
in con-
nection
with
prize
chits
or
money
circula-
tion
schemes.

3. No person shall promote or conduct any prize chit or money circulation scheme, or enrol as a member to any such chit or scheme, or participate in it otherwise, or receive or remit any money in pursuance of such chit or scheme.

4. Whoever contravenes the provisions of section 3 shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both:

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court, the imprisonment shall not be less than one year and the fine shall not be less than one thousand rupees.

5. Whoever, with a view to the promotion or conduct of any prize chit or money circulation scheme in contravention of the provisions of this Act or in connection with any chit or scheme promoted or conducted as aforesaid,—

(a) prints or publishes any ticket, coupon or other document for use in the prize chit or money circulation scheme; or

(b) sells or distributes or offers or advertises for sale or distribution, or has in his possession for the purpose of sale or distribution any ticket, coupon or other document for use in the prize chit or money circulation scheme; or

(c) prints, publishes or distributes, or has in his possession for the purpose of publication or distribution—

(i) any advertisement of the prize chit or money circulation scheme; or

(ii) any list, whether complete or not, of members in the prize chit or money circulation scheme; or

(iii) any such matter descriptive of, or otherwise relating to the prize chit or money circulation scheme, as is calculated to act as an inducement to persons to participate in that prize chit or money circulation scheme or any other prize chit or money circulation scheme; or

(d) brings, or invites any person to send, for the purpose of sale or distribution, any ticket, coupon or other document for use in a prize chit or money circulation scheme or any advertisement of such prize chit or money circulation scheme; or

(e) uses any premises, or causes or knowingly permits any premises to be used, for purposes connected with the promotion or conduct of the prize chit or money circulation scheme; or

(f) causes or procures or attempts to procure any person to do any of the above-mentioned acts,

shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to three thousand rupees, or with both:

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court, the imprisonment shall not be less than one year and the fine shall not be less than one thousand rupees.

6. (1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Offences
by
companies.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section—

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

7. (1) It shall be lawful for any police officer not below the rank of an officer in charge of a police station,—

Power to
enter,
search
and
seize.

(a) to enter, if necessary by force, whether by day or night with such assistance as he considers necessary, any premises which he has reason to suspect, are being used for purposes connected with the promotion or conduct of any prize chit or money circulation scheme in contravention of the provisions of this Act;

(b) to search the said premises and the persons whom he may find therein;

(c) to take into custody and produce before any Judicial Magistrate all such persons as are concerned or against whom a complaint has been made or credible information has been received or a reasonable suspicion exists of their having been concerned with the use of the said premises for purposes connected with, or with the promotion or conduct of, any such prize chit or money circulation scheme as aforesaid;

(d) to seize all things found in the said premises which are intended to be used, or reasonably suspected to have been used, in connection with any such prize chit or money circulation scheme as aforesaid.

(2) Any officer authorised by the State Government in this behalf may—

(a) at all reasonable times, enter into and search any premises which he has reason to suspect, are being used for the purposes connected with, or conduct of, any prize chit or money circulation scheme in contravention of the provisions of this Act;

(b) examine any person having the control of, or employed in connection with, any such prize chit or money circulation scheme;

(c) order the production of any documents, books or records in the possession or power of any person having the control of, or employed in connection with, any such prize chit or money circulation scheme; and

(d) inspect and seize any register, books of accounts, documents or any other literature found in the said premises

(3) All searches under this section shall be made in accordance with the provisions of the Code of Criminal Procedure, 1973.

2 of 1974.

Forfeiture
of news-
paper and
publication
containing
prize
chit or
money
circulation
scheme.

Power
to try
offences

Offences
under
this Act
to be
cognizable.
Act not to
apply to
certain
prize
chits or
money
circulation
schemes.

8. Where any newspaper or other publication contains any material connected with any prize chit or money circulation scheme promoted or conducted in contravention of the provisions of this Act or any advertisement in relation thereto, the State Government may, by notification in the Official Gazette, declare every copy of the newspaper and every copy of the publication containing such material or the advertisement to be forfeited to the State Government.

9. No court inferior to that of a Chief Metropolitan Magistrate, or as the case may be, Chief Judicial Magistrate, shall try any offence punishable under this Act.

10. All offences punishable under this Act shall be cognizable.

11. Nothing contained in this Act shall apply to any prize chit or money circulation scheme promoted by—

(a) a State Government or any officer or authority on its behalf or

(b) a company wholly owned by a State Government which does not carry on any business other than the conducting of a prize chit or money circulation scheme whether it is in the nature of a conventional chit or otherwise; or

(c) a banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949, or a banking institution notified by the Central Government, under section 51 of that Act or the State Bank of India constituted under section 3 of the State

10 of 1949

- 23 of 1955. Bank of India Act, 1955, or a subsidiary bank constituted under section 3 of the State Bank of India (Subsidiary Banks) Act, 1959, or a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, or a Regional Rural Bank established under section 3 of the Regional Rural Banks Act, 1976, or a co-operative bank as defined in clause (bii) of section 2 of the Reserve Bank of India Act, 1934; or
- 38 of 1959.
- 5 of 1970.
- 21 of 1976.
- 2 of 1934.

(d) any charitable or educational institution notified in this behalf by the State Government, in consultation with the Reserve Bank.

12. (1) Notwithstanding anything contained in this Act, a person conducting a prize chit or money circulation scheme at the commencement of this Act may continue to conduct such chit or scheme for such period as may be necessary for the winding up of the business relating to such chit or scheme, so however that such period shall not in any case extend beyond a period of two years from such commencement: Transitional provisions.

Provided that the said person shall furnish to the State Government or to such officer as may be authorised by it in this behalf and to such office of the Reserve Bank as may be prescribed in such form and within such period as may be prescribed, full information regarding the chit or scheme along with a winding up plan prepared in accordance with the provisions of any rules that may be made by the State Government in this behalf under this Act:

Provided further that if the State Government is satisfied, on an application made by the person conducting the prize chit or money circulation scheme, that the chit or scheme cannot be wound up within the period fixed in the winding up plan furnished to the State Government under the foregoing proviso, it may, in consultation with the Reserve Bank, permit such person to continue to conduct the business relating to the said chit or scheme for such further period as may be considered necessary having regard to the circumstances of the case and the interests of the members of the said chit or scheme.

(2) The State Government may, in consultation with the Reserve Bank, approve the winding up plan furnished under sub-section (1) with or without modifications or reject the same and may grant or refuse to grant permission to continue to conduct that chit or scheme:

Provided that no such winding up plan shall be modified or rejected without giving an opportunity of being heard to the person who conducts such prize chit or money circulation scheme.

(3) If any person fails to furnish full information regarding the said chit or scheme along with its winding up plan in the form and within the period prescribed, he shall forfeit his right to continue the business relating to the said chit or scheme on the expiry of such period.

(4) Notwithstanding anything to the contrary contained in any agreement or document entered into between any person conducting any such chit or scheme and the subscriber, the person conducting the chit or scheme shall refund the monies or the subscriptions collected till the date of default referred to in sub-section (3).

(5) If any person fails to comply with the provisions of sub-section (4), he shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to three thousand rupees, or with both:

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court, the imprisonment shall not be less than one year and the fine shall not be less than one thousand rupees.

Power to make rules. 13. (1) The State Government may, by notification in the Official Gazette and in consultation with the Reserve Bank, make rules for the purpose of carrying out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the office of the Reserve Bank to whom full information regarding any prize chit or money circulation scheme may be furnished under the first proviso to sub-section (1) of section 12, and the form in which and the period within which such information may be furnished;

(b) the particulars relating to the winding up plan of the business relating to prize chits or money circulation schemes.

Repeals and saving.

14. (1) The Andhra Pradesh Money Circulation Scheme (Prohibition) Act, 1965, as in force in the State of Andhra Pradesh, and in the Union territory of Chandigarh and the Madhya Pradesh Dhan Parichalan Skeem (Pratishedh) Adhiniyam, 1975, are hereby repealed.

Andhra Pradesh Act 30 of 1965.
Madhya Pradesh Act 19 of 1975.

(2) Notwithstanding the repeal of any Act referred to in sub-section (1), anything done or any action taken under the provisions of any such Act shall, in so far as such thing or action is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the provisions of this Act as if the said provisions were in force when such thing was done or such action was taken and shall continue in force accordingly until superseded by anything done or any action taken under this Act.

STATEMENT OF OBJECTS AND REASONS

In June 1974, the Reserve Bank of India had constituted a Study Group under the Chairmanship of Shri James S. Raj, the then Chairman, Unit Trust of India, for examining in depth the provisions of Chapter III B of the Reserve Bank of India Act, 1934, and the directions issued thereunder to non-banking companies in order to assess their adequacy in the context of ensuring the efficacy of the monetary and credit policies of the country and affording a degree of protection to the interests of the depositors who place their savings with such companies. In its report submitted to the Reserve Bank in July 1975, the Group observed that the prize chit/benefit/savings schemes benefit primarily the promoters and do not serve any social purpose. On the contrary, the Group has stated that they are prejudicial to the public interest and affect the efficacy of the fiscal and monetary policies of the country.

2. Prize chits would cover any kind of arrangement under which moneys are collected by way of subscriptions, contributions, etc. and prizes, gifts, etc. are awarded. The prize chit is really a form of lottery. Its basic feature is that the foreman or promoter who ostensibly charges no commission collects regular subscriptions from the members. Once a member gets the prize, he is very often not required to pay further instalments and his name is dropped from further lots. The institutions conducting prize chits are private limited companies with a very low capital base contributed by the promoters, directors or their close relatives. Such schemes confer monetary benefit only on a few members and on the promoter companies. The Group had, therefore, recommended that prize chits or money circulation schemes, by whatever name called, should be totally banned in the larger interests of the public and suitable legislative measures should be undertaken for the purpose.

3. The Bill proposes to implement the above recommendation of the Group by providing for the banning of the promotion or conduct of any prize chit or money circulation scheme, by whatever name called, and of the participation of any person in such chit or scheme. The Bill provides for a period of two years within which the existing units carrying on the business of prize chits or money circulation schemes may be wound up and provides for penalties and other incidental matters. The repeal of the existing State legislations on the subject has also been provided for in the Bill.

New Delhi;

H. M. PATEL.

The 19th April, 1978.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (1) of clause 13 of the Bill confers on the State Governments the power to make rules for carrying out the provisions of the Bill, in consultation with the Reserve Bank of India. Sub-clause (2) of that clause specifies the matters in respect of which rules may be made under this clause. These include the particulars relating to the winding up plan of the business relating to prize chits or money circulation schemes and the form in which and the period within which full information regarding such chits or schemes may be furnished to the State Government or the officer authorised by it in this behalf.

2. The matters with respect to which rules may be made under this clause are matters of procedure or detail. The delegation of legislative power is thus normal in character.

BILL No. 92 OF 1978

A Bill further to amend the Code of Criminal Procedure, 1973.

BE it enacted by Parliament in the Twenty-ninth Year of the Republic of India as follows:—

1. This Act may be called the Code of Criminal Procedure (Amendment) Act, 1978.

Short
title.

2 of 1974.

2. In the Code of Criminal Procedure, 1973 (hereinafter referred to as the principal Act), in section 2, in clause (j), the words “and such local area may comprise the whole of the State, or any part of the State, as the State Government may, by notification, specify” shall be inserted at the end.

Amend-
ment of
section 2.

3. In section 11 of the principal Act, to sub-section (1), the following proviso shall be added, namely:—

Amend-
ment of
section 11.

“Provided that the State Government may, after consultation with the High Court, establish, for any local area, one or more Special Courts of Judicial Magistrates of the first class or of the second class to try any particular case or particular class of cases, and where any such Special Court is established, no other court of

Magistrate in the local area shall have jurisdiction to try any case or class of cases for the trial of which such Special Court of Judicial Magistrate has been established.”.

Amend-
ment of
section 13.

4. In section 13 of the principal Act,—

(i) in sub-section (1), for the words “of the second class, in respect to particular cases or to particular classes of cases or to cases generally, in any district, not being a metropolitan area.”, the words “of the first class or of the second class, in respect to particular cases or to particular classes of cases, in any local area, not being a metropolitan area.” shall be substituted;

(ii) after sub-section (2), the following sub-section shall be inserted, namely:—

“(3) The High Court may empower a Special Judicial Magistrate to exercise the powers of a Metropolitan Magistrate in relation to any metropolitan area outside his local jurisdiction.”.

Amend-
ment of
section 14.

5. In section 14 of the principal Act,—

(a) to sub-section (1), the following proviso shall be added, namely:—

“Provided that the Court of a Special Judicial Magistrate may hold its sitting at any place within the local area for which it is established.”;

(b) after sub-section (2), the following sub-section shall be inserted, namely:—

“(3) Where the local jurisdiction of a Magistrate, appointed under section 11 or section 13 or section 18, extends to an area beyond the district, or the metropolitan area, as the case may be, in which he ordinarily holds Court, any reference in this Code to the Court of Session, Chief Judicial Magistrate or the Chief Metropolitan Magistrate shall, in relation to such Magistrate, throughout the area within his local jurisdiction, be construed, unless the context otherwise requires, as a reference to the Court of Session, Chief Judicial Magistrate, or Chief Metropolitan Magistrate, as the case may be, exercising jurisdiction in relation to the said district or metropolitan area.”.

Amend-
ment of
section 18

6. In section 18 of the principal Act,—

(i) in sub-section (1), the words “or to cases generally” shall be omitted;

(ii) for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) The High Court or the State Government, as the case may be, may empower any Special Metropolitan Magistrate to exercise, in any local area outside the metropolitan area, the powers of a Judicial Magistrate of the first class.”.

7. In section 20 of the principal Act, in sub-section (2),—

(a) for the words "all or any", the word "such" shall be substituted;

(b) after the words "in force", the words "as may be directed by the State Government" shall be inserted.

Amendment of section 20

8. For section 24 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 24.

"24. (1) For every High Court, the Central Government or the State Government shall, after consultation with the High Court, appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors, for conducting in such Court, any prosecution, appeal or other proceeding on behalf of the Central Government or State Government, as the case may be.

Public Prosecutors.

(2) The Central Government may appoint one or more Public Prosecutors for the purpose of conducting any case or class of cases in any district or local area

(3) For every district, the State Government shall appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors for the district:

Provided that the Public Prosecutor or Additional Public Prosecutor appointed for one district may be appointed also to be a Public Prosecutor or an Additional Public Prosecutor, as the case may be for another district.

(4) The District Magistrate shall, in consultation with the Sessions Judge, prepare a panel of names of persons, who are, in his opinion fit to be appointed as Public Prosecutors or Additional Public Prosecutors for the district

(5) No person shall be appointed by the State Government as the Public Prosecutor or Additional Public Prosecutor for the district unless his name appears in the panel of names prepared by the District Magistrate under sub-section (4).

(6) Notwithstanding anything contained in sub-section (5), where in a state there exists a regular Cadre of Prosecuting Officers, the State Government shall appoint a Public Prosecutor or an Additional Public Prosecutor only from among the persons constituting such Cadre:

Provided that where, in the opinion of the State Government, no suitable person is available in such Cadre for such appointment that Government may appoint a person as Public Prosecutor or Additional Public Prosecutor, as the case may be, from the panel of names prepared by the District Magistrate under sub-section (4).

(7) A person shall be eligible to be appointed as a Public Prosecutor or an Additional Public Prosecutor under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (5) or sub-section (6), only if he has been in practice as an advocate for not less than seven years.

(8) The Central Government or the State Government may appoint, for the purposes of any case or class of cases, a person who has been in practice as an advocate for not less than ten years as a Special Public Prosecutor.

(9) For the purposes of sub-section (7) and sub-section (8), the period during which a person has been in practice as a pleader, or has rendered (whether before or after the commencement of this Code) service as a Public Prosecutor or as an Additional Public Prosecutor or Assistant Public Prosecutor or other Prosecuting Officer, by whatever name called, shall be deemed to be the period during which such person has been in practice as an advocate.

Amendment of section 25.

9. In section 25 of the principal Act, after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) The Central Government may appoint one or more Assistant Public Prosecutors for the purpose of conducting any case or class of cases in the Courts of Magistrates.”

Amendment of section 102.

10. In section 102 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:—

“(3) Every police officer acting under sub-section (1) shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be conveniently transported to the Court, he may give custody thereof to any person on his executing a bond undertaking to produce the property before the Court as and when required and to give effect to the further orders of the Court as to the disposal of the same.”

Amendment of section 107.

11. In section 107 of the Principal Act, in sub-section (1), after the words “ordered to execute a bond,”, the words “with or without sureties,” shall be inserted.

Amendment of section 123.

12. In section 123 of the Principal Act,—

(i) in sub-section (1), for the words “the Chief Judicial Magistrate”, the words and figures “the District Magistrate in the case of an order passed by an Executive Magistrate under section 117, or the Chief Judicial Magistrate in any other case” shall be substituted;

(ii) in sub-sections (2), (5), (6), (7) and (9), for the words “Chief Judicial Magistrate”, wherever they occur, the words and figures “District Magistrate, in the case of an order passed by an Executive Magistrate under section 117, or the Chief Judicial Magistrate in any other case” shall be substituted.

Amendment of section 167.

13. In section 167 of the principal Act, in the proviso to sub-section (2),—

(a) for paragraph (a), the following paragraph shall be substituted, namely:—

“(a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention

of the accused person in custody under this paragraph for a total period exceeding,—

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence,

and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;";

(b) in paragraph (b), for the words "no Magistrate shall". the words "no Magistrate shall, except for reasons to be recorded in writing," shall be substituted;

(c) the *Explanation* shall be numbered as *Explanation II*, and before *Explanation II*, as so numbered, the following *Explanation* shall be inserted, namely:—

"Explanation I.—For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a), the accused shall be detained in custody so long as he does not furnish bail."

(d) after sub-section (2), the following sub-section shall be inserted, namely:—

"(2A) Notwithstanding anything contained in sub-section (1) or sub-section (2), the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of a sub-inspector, may, where a Judicial Magistrate is not available, transmit to the nearest Executive Magistrate, on whom the powers of a Judicial Magistrate or Metropolitan Magistrate have been conferred, a copy of the entry in the diary hereinafter prescribed relating to the case, and shall, at the same time, forward the accused to such Executive Magistrate, and thereupon such Executive Magistrate, may, for reasons to be recorded in writing, authorise the detention of the accused person in such custody as he may think fit for a term not exceeding seven days in the aggregate; and, on the expiry of the period of detention so authorised the accused person shall be released on bail except where an order for further detention of the accused person has been made by a Magistrate competent to make such order; and where an order for such further detention is made, the period during which the accused person was detained in custody under the orders made by an Executive Magistrate under this sub-section, shall be taken into account in computing the period specified in paragraph (a) of the proviso to sub-section (2):

Provided that before the expiry of the period aforesaid, the Executive Magistrate shall transmit to the nearest Judicial

Magistrate the records of the case together with a copy of the entries in the diary relating to the case which was transmitted to him by the officer in charge of the police station or the police officer making the investigation, as the case may be.”.

Amendment of section 167 to apply to pending investigations.

14. The provisions of section 167 of the principal Act, as amended by this Act, shall apply to every investigation pending immediately before the commencement of this Act, if the period of detention of the accused person, otherwise than in the custody of the police, had not, at such commencement, exceeded sixty days.

Amendment of section 182.

15. In section 182 of the principal Act, in sub-section (2), after the words “by the first marriage”, the words “, or the wife by the first marriage has taken up permanent residence after the commission of the offence” shall be inserted.

Amendment of section 196.

16. In section 196 of the principal Act, in sub-section (2), for the words “a cognizable offence”, the words “an offence” shall be substituted.

Amendment of section 198.

17. In section 198 of the principal Act, in paragraph (c) of the proviso to sub-section (1),—

(i) for the word and figures “section 494”, the words and figures “section 494 or section 495” shall be substituted;

(ii) after the words “mother’s brother or sister”, the words “, or, with the leave of the Court, by any other person related to her by blood, marriage or adoption” shall be inserted.

Amendment of section 206.

18. In section 206 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:—

“(3) The State Government may, by notification, specially empower any Magistrate to exercise the powers conferred by sub-section (1) in relation to any offence which is compoundable under section 320 or any offence punishable with imprisonment for a term not exceeding three months, or with fine, or with both where the Magistrate is of opinion that, having regard to the facts and circumstances of the case, the imposition of fine only would meet the ends of justice.”.

Amendment of section 209.

19. In section 209 of the principal Act, for clause (a), the following clause shall be substituted, namely:—

“(a) commit, after complying with the provisions of section 207 or section 208, as the case may be, the case to the Court of Session, and subject to the provisions of this Code relating to bail, remand the accused to custody until such commitment has been made;”.

Amendment of section 276.

20. In section 276 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) Such evidence shall ordinarily be taken down in the form of a narrative, but the presiding Judge may, in his discretion, take

down, or cause to be taken down, any part of such evidence in the form of question and answer.”.

21. In section 277 of the principal Act, in clause (a), after the words “taken down in that language”, the words “or if it is not practicable to do so, it shall be taken down in Hindi or in English” shall be inserted. Amendment of section 277.

22. In section 293 of the principal Act, in clause (e) of sub-section (4), after the word “Director”, the words “, Deputy Director or Assistant Director” shall be inserted. Amendment of section 293.

23. In section 297 of the principal Act, in sub-section (1), for clause (a), the following clause shall be substituted, namely:— Amendment of section 297.

“(a) any Judge or any Judicial or Executive Magistrate, or”.

24. In section 299 of the principal Act, in sub-section (1), after the words “competent to try”, the words “, or commit for trial,” shall be inserted. Amendment of section 299.

25. In section 309 of the principal Act, in sub-section (2), after the second proviso, the following proviso shall be inserted, namely:— Amendment of section 309.

“Provided also that no adjournment shall be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed on him.”.

26. In section 320 of the principal Act, in the Table under sub-section (1), in column 1, for the word “Defamation”, the words, figures and brackets “Defamation, except such cases as are specified against section 500 of the Indian Penal Code in column 1 of the Table under sub-section (2)” shall be substituted. Amendment of section 320.

46 of 1860.

27. In section 323 of the principal Act, the following shall be inserted at the end, namely:— Amendment of section 323.

“and thereupon the provisions of Chapter XVIII shall apply to the commitment so made”.

28. In section 326 of the principal Act,— Amendment of section 326.

(i) in sub-section (1), for the word “Magistrate”, wherever it occurs, the words “Judge or Magistrate” shall be substituted;

(ii) in sub-section (2), for the words “from one Magistrate to another Magistrate”, the words “from one Judge to another Judge or from one Magistrate to another Magistrate” shall be substituted.

29. In section 374 of the principal Act, in sub-section (2), for the words “has been passed”, the words “has been passed against him or against any other person convicted at the same trial” shall be substituted. Amendment of section 374.

30. In section 377 of the principal Act, in sub-section (2), for the words “the Central Government may direct”, the words “the Central Government may also direct” shall be substituted. Amendment of section 377.

Amend-
ment of
section
378.

31. In section 378 of the principal Act, in sub-section (1), the following shall be inserted at the end, namely:—

“or an order of acquittal passed by the Court of Session in revision”.

Amend-
ment of
section
428.

32. In section 428 of the principal Act, after the words “sentenced to imprisonment for a term” the words “, not being imprisonment in default of payment of fine,” shall be inserted.

Insertion
of new
section
433A.

33. After section 433 of the principal Act, the following section shall be inserted, namely:—

Restric-
tion on
powers
of remis-
sion or
commuta-
tion in
certain
cases.

“433A. Notwithstanding anything contained in section 432, where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishments provided by law, or where a sentence of death imposed on a person has been commuted under section 433 into one of imprisonment for life, such person shall not be released from prison unless he had served at least fourteen years of imprisonment.”.

Amend-
ment of
section
468.

34. In section 468 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:—

“(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.”.

Amend-
ment of
section
478.

35. In section 478 of the principal Act,—

(i) for the words “State Legislature”, the words “Legislative Assembly of a State” shall be substituted;

(ii) for the word “requires”, the word “permits” shall be substituted.

Amend-
ment of
the
Second
Schedule.

36. In the Second Schedule to the principal Act,—

(i) in Form No. 34,—

(a) in the heading, for the word “Magistrate”, the word “Court” shall be substituted;

(b) for the brackets, words and figures “(See sections 248 and 255)”, the brackets, words and figures “(See sections 235, 248 and 255)” shall be substituted;

(ii) in Form No. 41, for the brackets, words and figures “(See section 386)”, the brackets, words and figures “(See sections 386, 413 and 416)” shall be substituted;

(iii) in Form No. 42, for the brackets, words and figures “(See section 414)”, the brackets, words and figures “(See sections 413 and 414)” shall be substituted;

(iv) after Form No. 44, the following Form shall be inserted, namely:—

“FORM No. 44A

BOND FOR APPEARANCE OF OFFENDER RELEASED PENDING REALISATION OF FINE

[See section 424 (1)(b)]

WHEREAS I, (name), inhabitant of (place), have been sentenced to pay a fine of rupees and in default of payment thereof to undergo imprisonment for.....; and whereas the Court has been pleased to order my release on condition of my executing a bond for my appearance on the following date (or dates), namely:—

I hereby bind myself to appear before the Court of
at o'clock on the following date (or dates), namely:—

and, in case of making default herein, I bind myself to forfeit to Government the sum of rupees

Dated, this day of 19

(Signature).

WHERE A BOND WITH SURETIES IS TO BE EXECUTED, ADD—

We do hereby declare ourselves sureties for the above-named that he will appear before the Court of on the following date (or dates), namely:—

and, in case of his making default therein, we bind ourselves jointly and severally to forfeit to Government the sum of rupees.

(Signature).”;

(v) after Form No. 46, the following Forms shall be inserted, namely:—

“FORM No. 47

WARRANT OF ATTACHMENT TO ENFORCE A BOND

(See section 446)

To the Police Officer in charge of the police station at

WHEREAS (name, description and address of person) has failed to appear on (mention the occasion) pursuant to his recognizance, and has by default forfeited to Government the sum of rupees (the penalty in the bond); and whereas the said (name of person) has, on due notice to him, failed to pay the said sum or show any sufficient cause why payment should not be enforced against him;

This is to authorise and require you to attach any movable property of the said (name) that you may find within the district of , by seizure and detention, and, if the said amount be not paid within days, to sell the property so attached or so

much of it as may be sufficient to realise the amount aforesaid, and to make return of what you have done under this warrant immediately upon its execution.

Dated, this day of , 19

(Signature).

(Seal of the Court)

FORM No. 48

NOTICE TO SURETY ON BREACH OF A BOND

(See section 446)

To of

WHEREAS on the day of , 19 , you became surety for (name) of (place) that he should appear before this Court on the day of and bound yourself in default thereof to forfeit the sum of rupees to Government; and whereas the said (name) has failed to appear before this Court and by reason of such default you have forfeited the aforesaid sum of rupees

You are hereby required to pay the said penalty or show cause, within days from this date, why payment of the said sum should not be enforced against you.

Dated, this day of , 19 .

(Seal of the Court)

(Signature).

FORM No. 49

NOTICE TO SURETY OF FORFEITURE OF BOND FOR GOOD BEHAVIOUR

(See section 446)

To of

WHEREAS on the day of , 19 , you became surety by a bond for (name) of (place) that he would be of good behaviour for the period of and bound yourself in default thereof to forfeit the sum of rupees to Government; and whereas the said (name) has been convicted of the offence of (mention the offence concisely) committed since you became such surety, whereby your security bond has become forfeited;

You are hereby required to pay the said penalty of rupees or to show cause within days why it should not be paid.

Dated, this day of , 19

(Seal of the Court)

(Signature).

FORM No. 50

WARRANT OF ATTACHMENT AGAINST A SURETY

(See section 446)

To _____ of _____

WHEREAS (name, description and address) has bound himself as surety for the appearance of (mention the condition of the bond) and the said (name) has made default, and thereby forfeited to Government the sum of rupees _____ (the penalty in the bond);

This is to authorise and require you to attach any movable property of the said (name) which you may find within the district of _____, by seizure and detention; and, if the said amount be not paid within _____ days, to sell the property so attached, or so much of it as may be sufficient to realise the amount aforesaid, and make return of what you have done under this warrant immediately upon its execution.

Dated, this _____ day of _____, 19 ____.

(Seal of the Court)

(Signature).

FORM No. 51

WARRANT OF COMMITMENT OF THE SURETY OF AN ACCUSED
PERSON ADMITTED TO BAIL

(See section 446)

To the Superintendent (or Keeper) of the Civil Jail at _____

WHEREAS (name and description of surety) has bound himself as a surety for the appearance of (state the condition of the bond) and the said (name) has therein made default whereby the penalty mentioned in the said bond has been forfeited to Government; and whereas the said (name of surety) has, on due notice to him, failed to pay the said sum or show any sufficient cause why payment should not be enforced against him, and the same cannot be recovered by attachment and sale of his movable property, and an order has been made for his imprisonment in the Civil Jail for (specify the period);

This is to authorise and require you, the said Superintendent (or Keeper) to receive the said (name) into your custody with this warrant and to keep him safely in the said Jail for the said (term of imprisonment), and to return this warrant with an endorsement certifying the manner of its execution.

Dated, this _____ day of _____, 19 ____.

(Seal of the Court)

(Signature).

FORM No. 52

NOTICE TO THE PRINCIPAL OF FORFEITURE OF BOND TO KEEP THE PEACE

(See section 446)

To *(name, description and address)*

WHEREAS on the day of , 19 , you entered into a bond not to commit, etc., *(as in the bond)*, and proof of the forfeiture of the same has been given before me and duly recorded;

You are hereby called upon to pay the said penalty of rupees or to show cause before me within days why payment of the same should not be enforced against you.

Dated, this day of 19

*(Seal of the Court)**(Signature).*

FORM No. 53

WARRANT TO ATTACH THE PROPERTY OF THE PRINCIPAL ON BREACH OF A BOND TO KEEP THE PEACE

(See section 446)

To *(name and designation of police officer)*, at the police station of

WHEREAS *(name and description)* did, on the day of , 19 , enter into a bond for the sum of rupees binding himself not to commit a breach of the peace, etc., *(as in the bond)*, and proof of the forfeiture of the said bond has been given before me and duly recorded; and whereas notice has been given to the said *(name)* calling upon him to show cause why the said sum should not be paid, and he has failed to do so or to pay the said sum;

This is to authorise and require you to attach by seizure movable property belonging to the said *(name)* to the value of rupees , which you may find within the district of and, if the said sum be not paid within , to sell the property so attached, or so much of it as may be sufficient to realise the same; and to make return of what you have done under this warrant immediately upon its execution.

Dated, this day of 19

*(Seal of the Court)**(Signature).*

FORM No. 54

WARRANT OF IMPRISONMENT ON BREACH OF A BOND TO KEEP THE PEACE

(See section 446)

To the Superintendent (or keeper) of the Civil Jail at

WHEREAS proof has been given before me and duly recorded that *(name and description)* has committed a breach of the bond entered into by him to keep the peace, whereby he has forfeited to Government the sum of rupees ; and whereas the said

(name) has failed to pay the said sum or to show cause why the said sum should not be paid, although duly called upon to do so, and payment thereof cannot be enforced by attachment of his movable property, and an order has been made for the imprisonment of the said (name) in the Civil Jail for the period of (term of imprisonment):

This is to authorise and require you, the said Superintendent (or Keeper) of the said Civil Jail to receive the said (name) into your custody, together with this warrant, and to keep him safely in the said Jail for the said period of (term of imprisonment), and to return this warrant with an endorsement certifying the manner of its execution.

Dated, this day of , 19 .

(Seal of the Court)

(Signature).

FORM No. 55

WARRANT OF ATTACHMENT AND SALE ON FORFEITURE OF BOND FOR GOOD BEHAVIOUR

(See section 446)

To the police officer in charge of the police station at

WHEREAS (name, description and address) did, on the day of , 19 , give security by bond in the sum of rupees for the good behaviour of (name, etc., of the principal), and proof has been given before me and duly recorded of the commission by the said (name) of the offence of whereby the said bond has been forfeited; and whereas notice has been given to the said (name) calling upon him to show cause why the said sum should not be paid, and he has failed to do so or to pay the said sum;

This is to authorise and require you to attach by seizure movable property belonging to the said (name) to the value of rupees which you may find within the district of , and, if the said sum be not paid within , to sell the property so attached, or so much of it as may be sufficient to realise the same, and to make return of what you have done under this warrant immediately upon its execution.

Dated, this day of , 19 .

(Seal of the Court)

(Signature).

FORM No. 56

WARRANT OF IMPRISONMENT ON FORFEITURE OF BOND FOR GOOD BEHAVIOUR

(See section 446)

To the Superintendent (or Keeper) of the Civil Jail at

WHEREAS (name, description and address) did, on the day of , 19 , give security by bond in the sum of

rupees for the good behaviour of (*name, etc., of the principal*) and proof of the breach of the said bond has been given before me and duly recorded, whereby the said (*name*) has forfeited to Government the sum of rupees , and whereas he has failed to pay the said sum or to show cause why the said sum should not be paid although duly called upon to do so, and payment thereof cannot be enforced by attachment of his movable property, and an order has been made for the imprisonment of the said (*name*) in the Civil Jail for the period of (*term of imprisonment*);

This is to authorise and require you, the Superintendent (or Keeper), to receive the said (*name*) into your custody, together with this warrant, and to keep him safely in the said Jail for the said period of (*term of imprisonment*), returning this warrant with an endorsement certifying the manner of its execution.

Dated, this day of , 19 .

(*Seal of the Court*)

(*Signature*).".

STATEMENT OF OBJECTS AND REASONS

The Code of Criminal Procedure, 1973 came into force on the 1st day of April, 1974. The working of the new Code has been carefully watched and in the light of the experience, it has been found necessary to make a few changes for removing certain difficulties and doubts. The notes on clauses explain in brief the reasons for the amendments.

NEW DELHI;

S. D. PATIL

The 9th May, 1978.

Notes on clauses

Clause 2.—The jurisdiction of a Magistrate under the new Code is confined to a district. This has created difficulty in enabling the appointment of Magistrates with jurisdiction beyond a district, such as when Special Judicial Magistrates are to be appointed to try certain categories of cases or cases involving inter-district ramifications. The definition of the expression "local jurisdiction" in section 2(j) is therefore being amended to empower the State Government to define the local jurisdiction as extending to the whole of the State or to any part thereof in the case of Special Courts or Special Judicial Magistrates, where necessary.

Clause 3.—Under the new Code, Courts of Magistrates are established for every district. Sometimes it becomes necessary to set up Courts of Judicial Magistrates for trying special categories of cases, where the jurisdiction has to extend to areas beyond a district. Sub-section (1) of section 11 is being amended to empower the State Government to establish Special Courts of Judicial Magistrates having jurisdiction throughout any local area and to confer on such Courts exclusive jurisdiction to try any particular case or particular class of cases.

Clause 4.—The amendment to sub-section (1) of section 13 seeks to enable Special Judicial Magistrates to exercise jurisdiction over any local area and to enable the conferment on them the powers of a Magistrate of the first class also.

The High Court is also sought to be empowered to authorise Special Judicial Magistrate to exercise the powers of a Special Metropolitan Magistrate in relation to any metropolitan area outside his local jurisdiction.

Clause 5.—Sub-section (1) of section 14 is being amended to insert a proviso to the effect that the Court of Special Judicial Magistrate may hold its sitting at any place within the local area for which it is established. The intention is to facilitate the holding of mobile Courts.

New sub-section (3) is being inserted in section 14 to provide that, where the local jurisdiction of a Magistrate extends beyond a district or a metropolitan area in which he ordinarily holds his Court, references in the Code to the Court of Session or Chief Judicial Magistrate or Chief Metropolitan Magistrate shall, in relation to the entire area in the local jurisdiction be construed as references to the Court of Session, Chief Judicial Magistrate or Chief Metropolitan Magistrate, as the case may be, exercising jurisdiction over the district in which he ordinarily holds his Court.

Clause 6.—Section 18 is being amended to bring it in line with the amendment proposed to section 13.

The High Court is sought to be empowered to authorise a Special Metropolitan Magistrate to exercise powers of a Judicial Magistrate in any area outside his local jurisdiction.

Clause 7.—Sub-section (2) of section 20 is being amended to remove the difficulties in the interpretation, which may be felt, since the words “as the State Government may direct”, appearing in the corresponding provision in the old Code, were deleted from the provision in the new Code.

Clause 8.—The section is being amended (i) to enable the Central Government and State Governments to appoint one or more Additional Public Prosecutors for the High Court; (ii) to enable the Central Government to appoint one or more Public Prosecutors in any district or local area; (iii) to enable counting of service rendered as Prosecuting Officer before or after coming into force of the Code of Criminal Procedure, 1973 as service as an advocate for the purpose of appointment as Public Prosecutor or Additional Public Prosecutor or Special Public Prosecutor; and (iv) to provide that in any State where there exists a regular cadre of Prosecuting Officers, appointment of Public Prosecutors or Additional Public Prosecutors will be made only from that cadre and when there are no suitable persons available appointment can be made from the panel prepared by the District Magistrate in consultation with the Sessions Judge.

Clause 9.—Section 25 is being amended to empower the Central Government also to appoint Assistant Public Prosecutors for the purpose of conducting any case or class of cases in the Court of Magistrates, whenever necessary.

Clause 10.—Section 102 is being amended (1) to provide that the police officer shall forthwith report the seizure of any property under sub-section (1) to the Magistrate, as there is a lacuna in the Law and (2) to give effect to the observations of the Supreme Court made in *Anwar Ahmad vs. the State of U.P.* (AIR 1976 SC 680) that the police should be given the power to get a bond from the person to whom the property seized is entrusted, particularly in cases where a bulky property like elephant or car, is seized and the Magistrate is living at a great distance and it is difficult to produce the property seized before the Magistrate.

Clause 11.—Under the new Code, a Magistrate cannot demand surety from a person for keeping the peace. He can only demand a personal bond from the person concerned. It has been felt that the old provision permitting the demand of the sureties along with bond should be restored. Section 107 is being amended to enable the Magistrate to demand sureties in appropriate cases.

Clause 12.—Under the new Code even the bond executed under the orders of an Executive Magistrate can be cancelled only by the Chief Judicial Magistrate. Section 123 of the Code is being amended to empower the District Magistrate to release persons imprisoned for failure to give security in a case where such person was ordered by an Executive Magistrate to furnish security.

Clause 13.—Section 167 is being amended to empower the Magistrate to authorise detention, pending investigation, for an aggregate period of 90 days in cases where the investigation relates to offences punishable with death, imprisonment for life or imprisonment for not less than ten years or more and up to 60 days in any other case. These amendments

are intended to remove difficulties which have been actually experienced in relation to the investigation of offences of a serious nature.

A new sub-section is being inserted empowering an Executive Magistrate, on whom the powers of a Judicial Magistrate or Metropolitan Magistrate have been conferred under section 13 or section 18 to make an order for remand of an accused for a period not exceeding seven days in the aggregate in cases where a Judicial Magistrate is not available. The period of detention ordered by such a Magistrate will, however, be taken into account in computing the total period specified in clause (a). This is being done with a view to overcoming the difficulties arising out of a shortage of judicial magistrates in the remote areas.

Paragraph (b) of the proviso to sub-section (2) is being amended to provide that the requirement that the accused person should be produced before the Magistrate making an order for remand may be waived by the Magistrate for the reasons to be recorded by him. There may be cases where for practical considerations it may be difficult to produce the accused repeatedly for obtaining remand.

An Explanation is being inserted to clarify that when the accused person does not furnish bail would continue to be in detention.

Clause 14.—A provision is also being inserted to make the provisions of section 167 applicable to pending investigations.

Clause 15.—Section 182 is being amended to enable a complaint by a woman relating to an offence of bigamy, to be made at the place of permanent residence after the commission of the offence instead of at the place where she last resided with the husband.

Clause 16.—Sub-section (2) of section 196 restricts the power of the Court to take cognizance of the offence of any criminal conspiracy punishable under section 120B of the Indian Penal Code, other than a criminal conspiracy to commit a cognizable offence which is punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards unless the State Government or the District Magistrate has consented to the initiation of proceedings. The said sub-section is being amended to remove the distinction between cognizable and non-cognizable offences.

Clause 17.—Section 198 is being amended to provide that a complaint of an offence of bigamy may be filed also by any other person related to the wife by blood, marriage or adoption, after obtaining leave of Court. This is intended to afford the much needed help to the aggrieved woman in such cases.

Clause 18.—New sub-section (3) is being inserted in section 206 to enlarge the scope of the facility provided by that section so that the State Government may specially empower a Magistrate to exercise the powers conferred by sub-section (1) in relation to any offence which is compoundable under section 320 and to other offences punishable with imprisonment for a term not exceeding three months, where a Magistrate is of opinion that imposition of only fine would meet the ends of justice.

Clause 19.—Clause (a) of section 209 is being replaced by a new clause which clarifies that the commitment is to be made after complying with the provisions of section 207 or 208 and that the committing Court will also have the power to make an order for the remand of the accused in custody until the commitment has been made. This is intended to remove the difficulty actually experienced in cases where the committing Magistrate is unable to commit the accused on the same day.

Clause 20.—Under the new Code, in sessions trials, the evidence is to be recorded ordinarily in the form of questions and answers. It has been found that such recording of evidence caused delay. Section 276 is being amended to provide that, as under the old Code, evidence shall ordinarily be taken down in the form of a narrative, but the Judge may take down any particular question and answer verbatim.

Clause 21.—The present provision in the new Code is that the evidence shall be taken down in the language of the Court. This has created difficulties in areas where other languages are also in use. To remove practical difficulties in taking down evidence in the language of the Court, section 277 is being amended to provide that evidence may be taken down in Hindi or English, if it is not practicable to take down such evidence in the language of the Court.

Clause 22.—Sub-section (4) of section 293 is being amended to include Deputy Directors and Assistant Directors of Central and State Forensic Science Laboratories in the list of Government scientific experts.

Clause 23.—At present affidavits can be sworn in by a Judge or a Magistrate. To remove a doubt whether this would include Executive Magistrates, section 297 is being amended to clarify that the provision would cover Executive Magistrates also.

Clause 24.—Under section 299, evidence of witnesses can be recorded in the absence of the accused when he is absconding by the trying Magistrate and not by the committing Magistrate. The section is being amended to enable the committing Magistrate also to exercise the function of recording evidence of witnesses, when the accused is absconding.

Clause 25.—The new Code provides for an opportunity to an accused person to show cause against the proposed sentence. As this should not lead to delay, section 309 is being amended to clarify that adjournment shall not be granted only for the purpose of enabling the accused to show cause against the proposed sentence.

Clause 26.—The Table under sub-section (1) of section 320 is being amended to provide that only those cases of defamation may be compounded without the permission of the Court, as are not mentioned against section 500 of the Indian Penal Code, in column 1 of the Table under sub-section (2) of section 320.

Clause 27.—Section 323 is being amended so as to clarify that, where a commitment is made by a Magistrate after inquiry and trial, the procedure specified in Chapter XVIII shall apply to the commitment so made.

Clause 28.—Under the existing provision, a *de-novo* trial is not obligatory when there is a change of Magistrate. It is proposed to extend the scope of the section to the Court of Session also to expedite trial of cases therein.

Clause 29.—Section 374 is being amended to provide for cases where there are two or more accused persons. The right of appeal, where the appealable sentence has been passed against such person or against any other person convicted at the same trial, will be available to all the accused persons irrespective of the sentence passed on each. This was the position under the old Code.

Clause 30.—Section 377 is being amended to clarify that the State Government, besides the Central Government can also direct the Public Prosecutor to present an appeal against inadequate sentence in cases in which the offence was investigated by the Delhi Special Police Establishment or any other agency empowered to investigate an offence under any other **Central Act**.

Clause 31.—Section 378 is being amended to provide that an appeal can be filed in the High Court against an order of acquittal passed by Court of Session in revision.

Clause 32.—There was a doubt on the question whether the period of imprisonment referred to in section 428 will apply to the imprisonment in default of payment of fine. Section 428 is being amended to clarify that it will not apply to the imprisonment in default of payment of fine.

Clause 33.—Section 432 contains provision relating to powers of the appropriate Government to suspend or remit sentences. The Joint Committee on the Indian Penal Code (Amendment) Bill, 1972, had suggested the insertion of a proviso to section 57 of the Indian Penal Code to the effect that a person who has been sentenced to death and whose death sentence has been commuted into that of life imprisonment and persons who have been sentenced to life imprisonment for a capital offence should undergo actual imprisonment of 14 years in jail. Since this particular matter relates more appropriately to the Criminal Procedure Code, a new section is being inserted to cover the proviso inserted by the Joint Committee.

Clause 34.—In the new Code, there is no provision for computing the period of limitation in relation to offences which can be tried together. Section 468 is being amended to provide that for the purpose of computing the period of limitation in relation to offences which may be tried together, the offence for which the more severe punishment or, as the case may be the most severe punishment can be imposed shall be taken into account.

Clause 35.—Section 478 provides for the procedure for the alteration of functions allocated to Judicial Magistrates to Executive Magistrates or *vice versa* in certain cases. The procedure provides that if the State Legislature by a resolution so requires, the State Government may, in consultation with the High Court, by notification, give effect to the alteration of functions allocated to Judicial Magistrate to Executive Magistrates. The section is being amended to substitute "State Assembly" for "State Legislature" and to make some drafting improvements.

Clause 36.—(a) Forms Nos. 34, 41 and 42 are being amended to clarify that they can be used in connection with other relevant sections of the Code.

(b) A new Form No. 44A, which can be used under section 424, is being inserted.

(c) A set of Forms Nos. 47 to 56, which can be issued under section 446, is being inserted.

FINANCIAL MEMORANDUM

Clauses 8 and 9 of the Bill provide for the appointment of Public Prosecutor and Additional Public Prosecutors for the High Court, Public Prosecutors for the district or local area, Special Public Prosecutor for the purposes of any case or class of cases and Assistant Public Prosecutors for the courts of Magistrates by the Central Government. These are enabling provisions and the power given is meant to be exercised only when occasion demands. The appointment of Assistant Public Prosecutors by the Central Government will generally be made from among departmental officers. Provision for expenditure that may have to be incurred will be made in the appropriate budget as and when the occasion arises. It is, therefore, not possible to give an estimate of the actual expenditure (whether recurring or non-recurring) in this behalf at this stage.

BILL No. 91 OF 1978

A Bill further to amend the Income-tax Act, 1961 and the Wealth-tax Act, 1957.

BE it enacted by Parliament in the Twenty-ninth Year of the Republic of India as follows:—

1. (1) This Act may be called the Taxation Laws (Amendment) Act, 1978. Short title and commencement.

(2) It shall come into force on the 1st day of April, 1979.

2. In the Income-tax Act, 1961,—

Amendment of Act 43 of 1961.

(a) in Chapter III, after section 13, the following section shall be inserted, namely:—

‘13A. Any income of a political party which is chargeable under the head “Interest on securities”, “Income from house property” or “Income from other sources” or any income by way of voluntary contributions received by a political party from any person shall not be included in the total income of the previous year of such political party:

Special provision relating to incomes of political parties.

Provided that—

(a) such political party keeps and maintains such books of account and other documents as would enable the Income-tax Officer to properly deduce its income therefrom;

(b) in respect of each such voluntary contribution in excess of ten thousand rupees, such political party keeps and

maintains a record of such contribution and the name and address of the person who has made such contribution; and

(c) the accounts of such political party are audited by an accountant as defined in the *Explanation* below sub-section (2) of section 288.

Explanation.—For the purposes of this section, “political party” means an association or body of individual citizens of India registered with the Election Commission of India as a political party under paragraph 3 of the Election Symbols (Reservation and Allotment) Order, 1968 and includes a political party deemed to be registered with that Commission under the proviso to sub-paragraph (2) of that paragraph;.

(b) in section 37,—

(i) after sub-section (2A), the following sub-section shall be inserted, namely:—

“(2B) Notwithstanding anything contained in sub-section (1), no allowance shall be made in respect of expenditure incurred by an assessee on advertisement in any souvenir, brochure, tract, pamphlet or the like published by a political party.”;

(ii) in sub-section (3A) (as directed to be inserted by section 8 of the Finance Act, 1978),—

(1) for the words, brackets and figure “the provisions of sub-section (3)”, the words, brackets, figures and letter “the provisions of sub-section (2B) or sub-section (3)” shall be substituted;

(2) in the *Explanation*, in clause (a), for the words, brackets and figure “under sub-section (3)”, the words, brackets, figures and letter “under sub-section (2B), or sub-section (3), or both” shall be substituted;

(c) in section 139, after sub-section (4A), the following sub-section shall be inserted, namely:—

“(4B) The chief executive officer (whether such chief executive officer is known as Secretary or by any other designation) of every political party shall, if the total income in respect of which the political party is assessable (the total income for this purpose being computed under this Act without giving effect to the provisions of section 13A) exceeds the maximum amount which is not chargeable to income-tax, furnish a return of such income of the previous year in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and all the provisions of this Act, shall, so far as may be, apply as if it were a return required to be furnished under sub-section (1) ”.

Amend-
ment of
Act 27
of 1957.

3. In the Wealth-tax Act, 1957, in section 45, after clause (h), the following clause and *Explanation* shall be inserted, namely:—

‘(i) any political party.

Explanation.—For the purposes of clause (i), “political party” shall have the meaning assigned to it in the *Explanation* to section 13A of the Income-tax Act.’.

STATEMENT OF OBJECTS AND REASONS

Political parties are essential in any democratic set-up. The taxation of their income, however, reduces their disposable funds thereby adversely affecting their capacity to finance their activities from legitimate sources of income. It is, therefore, proposed to provide exemption from income-tax in respect of specified categories of income derived by political parties, namely, income from investments (both in movable and immovable properties) and income by way of voluntary contributions. The proposed exemption will be available only in the case of political parties which are registered or deemed to be registered with the Election Commission of India under the Election Symbols (Reservation and Allotment) Order, 1968. The exemption will not be allowed unless the political party maintains proper books of account; records the name and address of every person who has made a voluntary contribution of more than ten thousand rupees at a time; and the accounts of the political party are audited by a chartered accountant or other qualified accountant.

2. Payments made for advertisements in souvenirs, brochures and the like published by political parties are not made on considerations of commercial expediency, but are in the nature of disguised donations made with the twin objective of circumventing the ban on company donations and for securing their deduction in the computation of taxable profits. It is, therefore, proposed to provide that expenditure incurred by a tax-payer for purposes of advertisement in any souvenir, brochure or the like published by a political party will not be allowed as a deduction in computing the taxable profits.

3. One of the principal objects of wealth-tax is to reduce disparities in personal incomes and wealth. As this consideration does not apply in the case of political parties, it is proposed to exempt them from the levy of wealth-tax.

4. This Bill accordingly seeks to amend the Income-tax Act, 1961 and the Wealth-Tax Act, 1957 mainly with a view to achieving the aforesaid objects.

NEW DELHI;
The 12th May, 1978.

H. M. PATEL

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (c) of clause 2 of the Bill proposes to insert a new subsection (4B) in section 139 of the Income-tax Act, 1961 which requires the chief executive officer of a political party to furnish a return of income in such form and verified in such manner and setting forth such particulars as may be prescribed by rules made under the said Act. As the matters in respect of which rules may be made under this provision pertain to matters of detail or procedure, the delegation of legislative power is of a normal character.

AVTAR SINGH RIKHY,
Secretary.

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